

11906

United States
Circuit Court of Appeals
For the Ninth Circuit,

LeROY COWAN,

Appellant,

vs.

YOUNG IRON WORKS, a corporation,

Appellee.

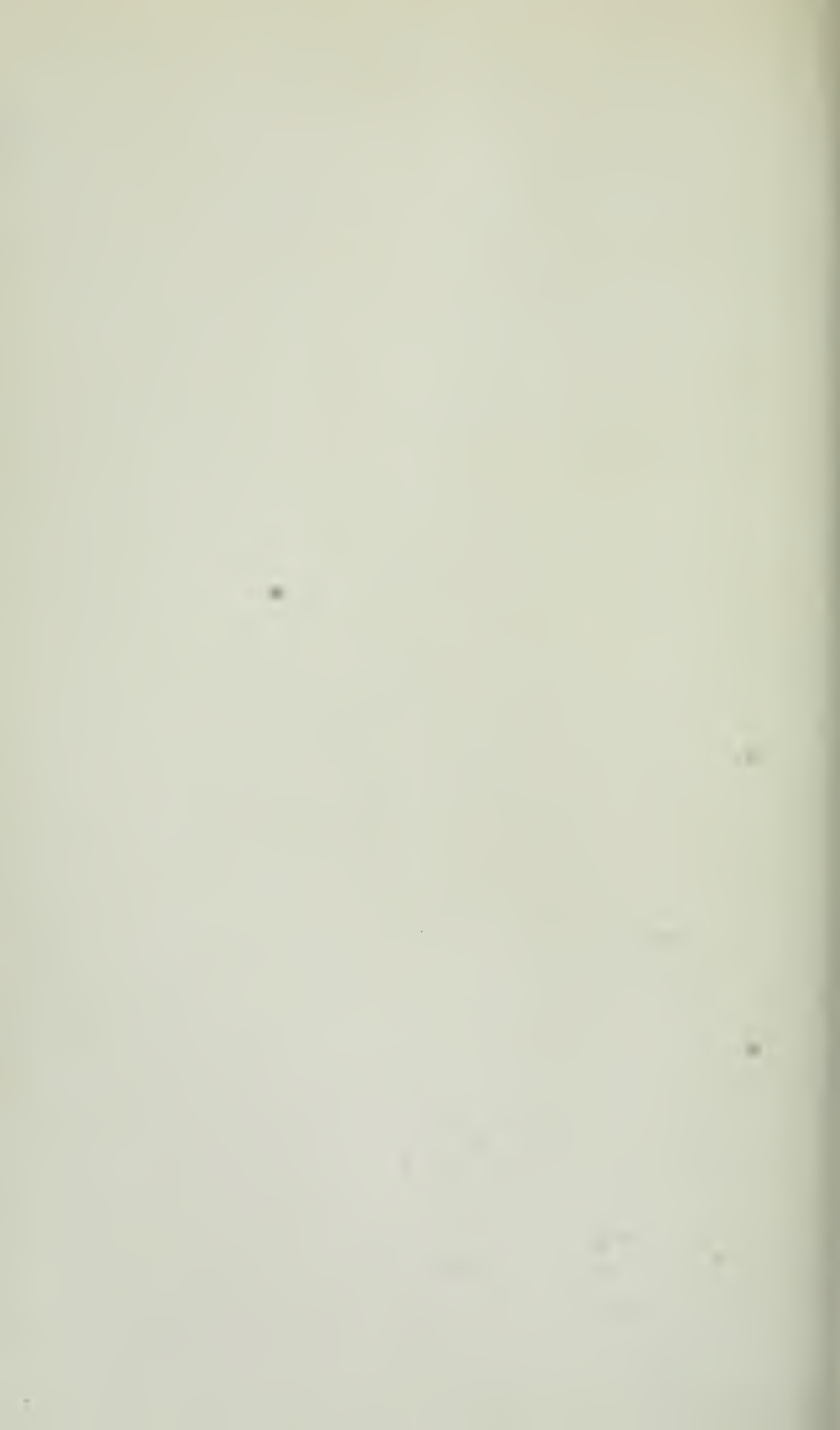
Transcript of Record

Upon Appeal from the District Court of the United States
for the Northern District of California,
Northern Division

FILED

JUN 2 - 1948

PAUL P. O'BRIEN,



United States
Circuit Court of Appeals
For the Ninth Circuit.

LeROY COWAN,

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Upon Appeal from the District Court of the United States
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[Clerk's Note: When deemed likely to be of an important nature, errors or doubtful matters appearing in the original certified record are printed literally in *italic*; and, likewise, cancelled matter appearing in the original certified record is printed and cancelled herein accordingly. When possible, an omission from the text is indicated by printing in *italic* the two words between which the omission seems to occur.]

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NAMES AND ADDRESSES OF ATTORNEYS

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The Superior Court of the State of California
in and for the County of Sacramento

Dept. 2—No. 75681

LeROY COWAN,

Plaintiff,

vs.

YOUNG IRON WORKS, a corporation,
FIRST DOE, SECOND DOE and THIRD DOE,
Defendants.

COMPLAINT

Now comes plaintiff above named and complains of defendants above named, and for cause of action alleges:

I.

That plaintiff does not know the true names of the defendants sued herein under the fictitious names of First Doe, Second Doe and Third Doe, and for that reason sues said defendants under said fictitious names and prays leave of Court to amend this complaint by inserting the true names of said defendants when the same are ascertained.

II.

That plaintiff is informed and believes and on that ground alleges that at all times herein mentioned the above named defendants, Young Iron Works, was and still is a corporation organized and existing under and by virtue of the laws of the State of Washington, and that at all of said times

said defendants, Young Iron Works, First Doe, Second Doe and Third Doe, were and still are doing business in the State of California. [1*]

III.

That at all times herein mentioned the above named defendants were engaged in the business of manufacturing and selling to the general public metallic articles of various types; that among the metallic articles so manufactured and sold by defendants, as aforesaid, were certain mechanical appliances commonly known as "swivels"; that a swivel is intended to be used and is used for the purpose of supporting cables used with derricks and other devices in lifting or pulling heavy loads, and that a swivel, when used for the purpose for which it is intended to be used, as aforesaid, is subject to great stress and is required to have tensile strength sufficient to withstand the strain of carrying such loads as are lifted or pulled by the derrick or device to which such swivel is attached.

IV.

That at all times herein mentioned defendants knew the purpose for which a swivel is intended to be used, and is used, as aforesaid; that at all of said times defendants held themselves out to the general public as being possessed of skill and knowledge and competence in the proper manufacture of swivels; that the proper manufacture of a swivel requires, and defendant at all of said

* Page numbering appearing at foot of page of original certified Transcript of Record

times knew that the proper manufacture of a swivel requires, that the metal therein used be flawless, and that such swivel be properly forged and welded, and that upon completion of the making thereof such swivel be inspected and tested for defects and tensile strength by the manufacturer thereof.

V.

That at all times herein mentioned the Eldo Lumber Company was engaged in logging and lumbering operations conducted near the town of Georgetown, County of El Dorado, State of California; that on or about the 22nd day of July, 1946, said Eldo Lumber Company, in order to conduct said logging and lumbering operations at [2] the place hereinabove referred to, required a swivel for use in connection with the operation of lifting and loading timber logs on trucks by one of its derricks at said place; that on or about said date, and in order to procure such swivel, the said Eldo Lumber Company placed an order with a certain dealer engaged by defendants, at Sacramento, California, to sell swivels and other metallic appliances manufactured by defendants in the territory of Northern California, including the County of El Dorado, for a certain swivel advertised by defendants as being manufactured by them and suitable for logging and lumbering operations; that said dealer thereupon ordered said swivel from defendants; that defendants accepted and filled said order and delivered to said dealer a swivel manufactured by defendants, and upon delivery thereof

by defendants to said dealer said dealer thereupon sold and delivered the same to Eldo Lumber Company.

VI.

That at the time defendants manufactured said swivel and at the time the same was delivered to said dealer by defendants, as aforesaid, said defendants had notice and knew that said swivel would be used to support cables utilized in lifting or pulling heavy loads by a derrick or other device and that at said times defendants further knew and had notice that said swivel would be used by the servants, agents and employees of the ultimate purchaser thereof from said dealer, and that said swivel would be apt to be used, among other things, in connection with logging and lumbering operations; that defendants then further knew and had notice that the servants, agents and employees of the ultimate purchaser thereof from said dealer would be working on and about loads carried or pulled by cables supported by means of said swivel on the derrick or device to which such swivel might be attached; that defendants then further knew [3] and had notice that said swivel would be used by the ultimate purchaser thereof from said dealer and by the servants, agents and employees of such purchaser, without being tested for its tensile strength by such purchaser or the servants, agents or employees of such purchaser; that defendants then further knew and had notice that said swivel, when used for the purpose for which it was intended to be used, and for which purpose it was used at all times herein men-

tioned, would be imminently and inherently dangerous if not properly manufactured and if any defects existed therein: and defendants then further knew and had notice that the ultimate purchaser of said swivel from said dealer, as aforesaid, and the servants, agents and employees of such purchaser would rely on defendants to properly manufacture said swivel and to inspect and test the same: that defendants then further knew and had notice that if said swivel was not properly manufactured and if any defects existed therein said swivel would be apt to break while being used for the purpose for which the same was intended to be used, and that as a proximate result of such breaking any cable, appliance or load supported or carried by such swivel would be caused to fall and be precipitated downward and cause injury to any person or to any servant, agent or employee of said purchaser who might be in proximity to or working on, about or below the derrick or device to which said swivel was attached.

VII.

That at the time said defendants delivered said swivel to said dealer, as aforesaid, and at the time said dealer delivered the same to said Eldo Lumber Company, as aforesaid, the same was in a defective condition in that there existed flaws in the metal thereof and said swivel did not possess the tensile strength required to withstand the strain to which the same would be subjected when used for the purpose for which said swivel was manufactured by

defendants, and for which it was intended to be used, as aforesaid; that said [4] defendants carelessly and negligently manufactured said swivel and negligently failed in the manufacture thereof to use flawless material therein and to properly forge and weld the same, and that defendants carelessly and negligently failed to properly inspect and test said swivel for defects and tensile strength, and that said defective condition of said swivel was proximately caused and existed solely by reason of the said carelessness and negligence of defendants in manufacturing, inspecting and testing the said swivel as hereinabove alleged, and that as a proximate result of said carelessness and negligence of said defendants said swivel was inherently dangerous and unsuitable and unsafe for the purpose for which the same was intended to be used, as aforesaid, and for which purpose defendants knew and had notice the same was intended to be used.

VIII.

That said defective condition of said swivel hereinabove referred to was latent and was not known and could not be known by said Eldo Lumber Company and its servants, agents or employees in the exercise of ordinary care, and that at the time said swivel was sold and delivered by said dealer hereinabove referred to to said Eldo Lumber Company, as aforesaid, and at the time said swivel was used by said Eldo Lumber Company, as hereinafter alleged, said Eldo Lumber Company and the servants, agents and employees thereof, including plaintiff,

relied on the fact that said swivel was properly manufactured, inspected and tested by defendants, and that said swivel was free from defects and suitable for the purpose for which the same was intended to be used, as aforesaid.

IX.

That at all times herein mentioned plaintiff was a servant, agent and employee of the said Eldo Lumber Company herein referred to, and was engaged in the course and scope of his employment in working on and about the place where said logging and lumbering operations [5] were being conducted by said Eldo Lumber Company, as aforesaid.

X.

That on or about the 12th day of August, 1946, and at the place of its said logging and lumbering operations hereinabove referred to, and in reliance on the fact that said swivel was properly manufactured, inspected and tested by defendants, and that said swivel was free from defects and suitable for the purpose for which the same was intended to be used, as aforesaid, the said Eldo Lumber Company, in the course of its said logging and lumbering operations, commenced using said swivel in conjunction with a certain derrick utilized in lifting and loading timber logs on to trucks; that on or about said date, and while said swivel was being used in a proper manner by said Eldo Lumber Company for the purpose for which said swivel was intended to be used, as aforesaid, and while said derrick was engaged in lifting a certain timber log

by means of a cable supported by said swivel said swivel burst asunder and broke; that by reason of the bursting asunder and breaking of said swivel, as aforesaid, the cable and other appliances supported thereby were precipitated downward onto the ground; that said swivel so burst asunder and broke and said cable and appliances supported thereby were precipitated downward solely by reason of said defective condition of said swivel, which was caused as the proximate result of the carelessness and negligence of defendants, as hereinabove alleged; that at the time said swivel so burst asunder and broke, and at the time said cable and appliances supported thereby were precipitated downward, plaintiff was working in proximity to said derrick to which said swivel had been attached, and that upon the said cable and appliances supported by said swivel being precipitated downward, as aforesaid, plaintiff, as a proximate result thereof and of the bursting asunder and breaking of said swivel, as aforesaid, was caused to be struck by said cable and appliances supported by said swivel, and as a proximate result thereof was caused to and did sustain the following injuries: [6]

Severe fractures of the bone structure of the skull; concussion of the brain resulting in severe injury to the tissue, cells and nerve centers thereof; lacerations on and about the head; severe shock to the physical and nervous system;

and as a proximate result of said injuries sustained as aforesaid, plaintiff was rendered unconscious for

a long period of time and was caused to be hospitalized, was required to submit to various surgical procedures, was caused to endure pain and suffering, and was caused to be wholly disabled, and that as a further proximate result of said injuries sustained as aforesaid, the memory of plaintiff has become impaired, his eyesight and sense of smell have become affected, his powers of thought, concentration and reaction to mental impulses are diminished, he has become subject to headaches and dizzy spells, his nervous system has become upset, and his ability to withstand the stress and strain of ordinary everyday activity is grievously impaired; that plaintiff is informed and believes and on that ground alleges that the said results of said injuries are permanent in character and that he will be affected thereby during the balance of his life.

XI.

That as a proximate result of said carelessness and negligence of said defendants in causing plaintiff to sustain and suffer said injuries, as hereinabove alleged, plaintiff has sustained general damages in the sum of \$50,000.00.

XII.

That as a proximate result of said carelessness and negligence of said defendants in causing plaintiff to sustain and suffer said injuries, as hereinabove alleged, plaintiff was necessarily obliged to and did procure hospitalization, ambulance hire, X-rays, and the services of nurses, physicians and

surgeons in the treatment of said injuries, and that the following liabilities were incurred therefor:

Hospitalization and X-rays.....	\$1,063.81
Ambulance hire.....	50.16
Nurses	999.00
Physicians and surgeons.....	629.25

Total\$2,742.22

and that each of said amounts hereinabove set forth is the reasonable value of the respective items represented thereby; that plaintiff is informed and believes and on that ground alleges that he will be required to procure further medical care in the treatment of his said injuries, and that liability be incurred therefor in an amount not now known, and plaintiff prays leave of Court to amend this complaint by insertion of such amount when the same is ascertained.

XIII.

That on the said 12th day of August, 1946, said plaintiff was of the age of 25 years, and at said time and prior thereto he was in perfect health and able-bodied, and was regularly employed and capable of earning and in receipt of earnings from his said employment in the sum of approximately \$10.00 per day; that by reason of said injuries sustained as aforesaid, said plaintiff has ever since said date been wholly disabled from engaging in the employment in which he was engaged on said date, or any like employment, and that with the exception of a three-week period during which light work

was attempted by plaintiff, plaintiff has been wholly disabled from engaging in any employment whatever to the date hereof, and that by reason thereof has been deprived of earnings to date in the sum of \$2,090.00; that plaintiff is informed and believes and on that ground alleges that as a proximate result of said injuries sustained as aforesaid, his capacity for engaging in employment and ability to earn money in the future will be permanently impaired.

Wherefore, plaintiff prays for judgment against defendants in the sum of \$54,832.22, for costs of suit herein incurred, and for such other and further relief as to the Court may seem meet and proper.

(Verification.)

ARCHIBALD D. McDOUGALL,
Attorney for Plaintiff. [8]

[Endorsed]: Filed Apr. 18, 1947. [9]

[Title of Superior Court and Cause.]

ORDER DIRECTING SERVICE OF SUM-
MONS ON FOREIGN CORPORATION IN
MANNER PRESCRIBED BY SECTION 406
(a) OF THE CIVIL CODE

It appearing to the satisfaction of the Court that due diligence and diligent search has been made on behalf of plaintiff above named to find and locate in the State of California the officers or agents of the above-named defendant, Young Iron Works, occu-

pying the status set forth in Section 406(a) of the Civil Code, but that none of the said officers or agents can be found in this state; and it further appearing to the satisfaction of the Court that said defendant, Young Iron Works, has not designated an agent in California upon whom process may be served; and it further appearing to the satisfaction of the Court that said defendant, Young Iron Works, is a foreign corporation organized and existing under and by virtue of the laws of the State of Washington; and it further appearing to the satisfaction of the Court that service of process in the above-entitled action should be made on said defendant, Young Iron Works, in the manner provided by Section 406 (a) [10] of the Civil Code of California; and other good cause appearing therefor;

It Is Hereby Ordered that service of summons in the above-entitled action on the above-named defendant, Young Iron Works, be made as provided by Section 406(a) of the Civil Code of California.

Dated this 29th day of May, 1947.

PETER J. SHIELDS,

Judge of the Superior Court.

[Endorsed]: Filed May 29, 1947. [11]

[Title of Superior Court and Cause.]

AFFIDAVIT FOR ORDER DIRECTING SERVICE OF PROCESS ON FOREIGN CORPORATION UNDER SECTION 406(a) OF THE CIVIL CODE

State of California,
County of Sacramento—ss.

Lloyd G. Buchler, being first duly sworn, deposes and says:

That he is one of the attorneys of record for the above-named plaintiff; that he is familiar with all of the facts in this action; and that he makes this affidavit for and on behalf of said plaintiff for the purpose of showing diligent search in this state for agents or officers of the above-named defendant, Young Iron Works, upon whom service of process can be made in this action;

That affiant is informed and believes and on that ground avers that at all times mentioned in plaintiff's complaint herein the above-named defendant, Young Iron Works, was and is now a foreign corporation organized and existing under the laws of the State of Washington, and that said defendant, Young Iron Works, was [12] at all of said times mentioned in plaintiff's complaint and is now doing business within the State of California;

That immediately following the filing of the complaint in this action on April 18, 1947, affiant caused inquiry to be made of the Secretary of State of the State of California to determine whether or not any person had been designated by said Young Iron

Works under the provisions of Section 405 of the Civil Code as its agent in California upon whom process directed to said Young Iron Works might be served, but that affiant is informed and believes and on that ground avers that no such agent has been so designated by said Young Iron Works in this state; that thereupon affiant contacted Thomas H. Lynn, Assistant Sales Manager of Weaver Tractor Company, located at Nineteenth and "T" Streets, Sacramento, California, and was advised that said Weaver Tractor Company was the exclusive dealer and agent for the sale of products of said Young Iron Works in the territory comprising Sacramento, El Dorado, Amador and Yolo Counties in the State of California, but that said Weaver Tractor Company was not authorized to accept service of process for or on behalf of said Young Iron Works; that affiant was further informed by the said Thomas H. Lynn that neither the president or other head of said Young Iron Works, or a vice-president, a secretary, an assistant secretary, or any other officer or general manager of said Young Iron Works resided or was located in the State of California, and that none of such officers could be found within this state; that affiant was further informed by the said Thomas H. Lynn that the only representatives of said Young Iron Works calling upon the said Weaver Tractor Company in the normal course of business were salesmen or sales agents, and that none of said salesmen or sales agents were officers or persons authorized to accept service of process on behalf of said Young

Iron Works in this state; that affiant was further informed by [13] the said Thomas H. Lynn there was a possibility further information concerning the matter of whether any officers or agents of said Young Iron Works authorized to accept service of process could be found in this state could be obtained by contacting Barnett Company, located in San Francisco, California, which said Barnett Company was reputed to be a distributing agent of said Young Iron Works in this state; that thereafter affiant caused the said Barnett Company to be contacted in San Francisco, California, but was advised that said Barnett Company no longer represented or acted on behalf of said Young Iron Works in California, but that a certain firm known as the Lumbermen's Supply Company, located in San Francisco, California, were now acting as the sales representative and distributing agent of said defendant, Young Iron Works, in the State of California; that thereupon affiant contacted the said Lumbermen's Supply Company, whose office is located on Main Street in San Francisco, California, and was informed by one George D. Oliver, Jr., bearing an official capacity with said Lumbermen's Supply Company, that his firm represented the said defendant, Young Iron Works, in California as a manufacturing agent and dealer in the vicinity of San Francisco, but that said Lumbermen's Supply Company was not authorized to accept service of process on behalf of said Young Iron Works; that affiant was likewise informed by the said George D. Oliver, Jr., of said Lumbermen's Supply Company,

that there was no officer or agent of said Young Iron Works located in California upon whom service of process directed to said corporation could be made;

That notwithstanding his search therefor, affiant has not been able to find any of the officers or agents set forth in Section 406(a) of the Civil Code upon whom service of process can be made on behalf of said defendant, Young Iron Works, and that affiant is informed and believes and on that ground avers that there are no such officers or agents located in this state. [14]

Wherefore, affiant prays that an order be made by the above-entitled Court finding that due diligence and diligent search has been exercised in attempting to locate in California any of the officers or agents referred to in Section 406(a) of the Civil Code upon whom service of process can be made on behalf of said defendant, Young Iron Works, within the State of California, and that such order direct that service of summons be made by delivery thereof to the Secretary of the State of California in accordance with the provisions of said Section 406(a) of the Civil Code.

LLOYD G. BUCHLER.

Subscribed and sworn to before me this 29th day of May, 1947.

GLADYS H. DENNIS,

Notary Public in and for the County of Sacramento, State of California.

[Endorsed]: Filed May 29, 1947. [15]

[Title of Superior Court and Cause.]

AFFIDAVIT OF PAUL J. ISAACSON

State of Washington,
County of King—ss.

Comes Now Paul J. Isaacson and, being first duly sworn, on oath deposes and says:

1. Affiant is the President of Young Iron Works, a Washington corporation, of Seattle, Washington, and makes this affidavit on behalf of said corporation, but affiant does so by way of a special appearance only in the above-entitled proceeding; that is, under protest and solely for the purpose of challenging the service of process, if any, claimed to have been upon said Young Iron Works, a corporation, and to support any appropriate motions or objections which may be made to said purported service of process or for the purpose of quashing the above-entitled proceeding, and for the purpose of objecting to the jurisdiction of the above-entitled court over said corporation or any matter affecting the interests of said corporation. This affidavit is further made without admitting or intending to admit by implication the truth of any of the allegations made by the plaintiff in the above-entitled action.

2. Said corporation does not do business in the State [16] of California and never has done business there.

3. Said corporation was organized and exists only under the laws of the State of Washington. Said corporation is engaged in manufacturing in Seattle, Washington, simple mechanical devices such

as blocks, tongs, hooks, swivels, sockets, shackles, clevises, and said corporation's only offices are in Seattle, Washington. Said corporation's only manufacturing plant is in Seattle, Washington. Said corporation's only place of business is in Seattle, Washington. Said corporation has no merchandise or stock of goods of any kind or character at any place other than in Seattle, Washington, at its said plant and place of business.

4. In California said corporation neither has nor maintains any offices or place of business, nor has it any employees or agents or sales organization or representatives of any kind or character for any purpose whatsoever.

5. Said corporation's products are manufactured only in Seattle, Washington, are sold only from Seattle, Washington, and shipped only from Seattle, Washington. Said corporation has no stock of goods or parts in California nor on consignment nor in storage there.

6. All sales of said corporation's products are made in Seattle, Washington. Any sales made to California customers are made in interstate commerce. Said corporation has one salesman who visits prospective customers in various western states approximately twice a year to solicit orders. He resides in Seattle, Washington. He does not take up any residence in California, nor has he ever established any office or place of business in California. All orders for said corporation's products are submitted to said Seattle office and all sales are made from Seattle.

7. Customers in California for said corporation's products include dealers who handle mining, quarrying, logging and [17] marine equipment.

8. This corporation has no contracts or agreements with dealers, distributors, factory representatives or any other agencies whatsoever for the handling or sale of said corporation's products in California, or for the representation of said corporation in California, or for any other purpose whatsoever. No California customer for the corporation's products and no California dealer or merchant handling the types of devices manufactured by the corporation is affiliated with or a subsidiary of said corporation in any way. Said corporation has no financial or other interest in any business, merchant or dealer in California who may buy, use or sell products manufactured by the corporation, nor are there any such persons, firms or corporations having any interest in said corporation.

9. Such dealers in California who handle tools or devices used by the mining, quarrying, logging or marine industries and who purchase products of said corporation for their business ordinarily do so pursuant to orders sent in by mail to the Seattle office of the corporation. Such orders are accepted in Seattle and filled from stock or manufactured at Seattle.

10. All customers of said corporation, including any dealers or other users of said products who are in California place their orders with this corporation and buy direct for their own accounts. The corporation has no interest in the goods shipped to

said customers and the only goods shipped into California by this corporation have been sold by the corporation to its customers.

11. The devices manufactured by the corporation are simple metal or mechanical parts or forms of devices, readily installed and adapted by purchasers to their own needs. No installation or engineering service is required for either the use or sale of the products and the corporation furnishes no engineers, [18] installers or mechanics of any kind.

12. No maintenance or servicing of products by the factory is required in order to make or complete sales and the corporation has no mechanics, maintenance, or other people in California or elsewhere.

13. No stock of replacement parts is needed in California and no stock of parts for the products of the corporation are maintained in California or elsewhere.

14. The corporation neither maintains nor participates in any exhibits, displays or demonstrations of its products in California.

15. Such customers in California who may have bought the products of the corporation and may resell the same in the course of their own businesses do so entirely for their own accounts. The corporation has no interest in said resales nor in the collection of the proceeds of such sales. No one in California makes any sales or transactions for the account of the corporation or in which the corporation has any interest.

16. The corporation does not maintain bank or other accounts in any form in the State of California.

PAUL J. ISAACSON.

Subscribed and Sworn to before me this 23d day of June, 1947.

[Seal] EDWARD DUFF MURRAY,
Notary Public in and for the State of Washington,
Residing at Seattle. [19]

[Title of Superior Court and Cause.]

PETITION FOR REMOVAL OF CAUSE TO
THE UNITED STATES DISTRICT COURT

To the Honorable the Superior Court of the State
of California in and for the County of Sacramento:

The petition of Young Iron Works, a corporation, the defendant in the above entitled action, respectfully shows:

That said action was brought and is pending in the Superior Court of the State of California, in and for the County of Sacramento.

That the time within which said defendant is required to plead or answer to the complaint of the plaintiff on file in said action under the laws of the State of California and the rules of said court has not expired.

That said defendant has appeared specially and

not otherwise in said action by way of a motion to quash service of summons and said defendant reserves such special appearance and all rights under said motion to quash.

That said action is an action for damages to wit: an action by the plaintiff to recover the sum of \$54,832.22 from the defendant, Young Iron Works, a corporation; that said claim is based on the following allegations: that plaintiff was injured on or about the 22nd day of July, 1946, while employed by the Eldo [20] Lumber Company and while engaged in certain logging operations as the result of the alleged breaking of a swivel which plaintiff alleges was negligently and carelessly manufactured by this defendant and which was inherently dangerous due to latent flaws and defects therein; reference is hereby made to the complaint on file herein for further particulars and by such reference incorporated herein as though fully set forth herein.

That said action is one over which the District Court of the United States has jurisdiction under the provisions of Section 24, as amended, of the Judicial Code of the United States.

That said action is between citizens of different states.

That said plaintiff was at the time of the commencement of said action, and ever since has been, and is now, a citizen, resident and inhabitant of the County of Sacramento, State of California, and of the Northern District of California, Northern Division of the United States District Court.

That the defendant, Young Iron Works, a corporation, was at the time of the commencement of this action, and ever since has been, and is now, a corporation organized and existing under and by virtue of the laws of the State of Washington, and a citizen, subject, resident and inhabitant of the said State of Washington, and was not at said time and is not now a resident, citizen, subject or inhabitant of the State of California.

That the defendant, Young Iron Works, a corporation, is the only necessary and proper party defendant for a complete determination of the subject matter of said action; that the defendants sued herein under fictitious names are non-existent and have no interest in said action; that no relief can be granted against the defendants sued under fictitious names.

That no prior application has been made to any court or Judge for the order applied for in this petition.

That petitioner desires to remove said action before any [21] further proceedings are taken therein to the District Court of the United States for the Northern District of California, Northern Division, said court being the court to be held in the district and division where this action is pending, and your petitioner offers and files herein a bond with good and sufficient security for its entering and filing in said District Court of the United States for the Northern District of California, Northern Division, within thirty days from the date of filing this peti-

tion, a certified copy of the record in this action and paying all costs that may be awarded by said District Court, if said District Court should hold that said action was wrongfully and improperly removed thereto.

Wherefore, your petitioner prays that this honorable Court to proceed no further herein except to accept this petition and surety bond, and make an order staying further proceedings herein, and to cause the record herein to be removed to the said District Court of the United States for the Northern District of California, Northern Division.

/s/ GERALD R. JOHNSON,
JOHNSON, WARE AND
DAVIES,

Attorneys for Defendant,
Young Iron Works, a corporation.

(Verification)

[Endorsed]: Filed July 1, 1947. [22]

In the Superior Court of the State of California
in and for the County of Sacramento

Dept. 2—No. 75681

LeROY COWAN,

Plaintiff,

vs.

YOUNG IRON WORKS, a corporation, FIRST
DOE, SECOND DOE and THIRD DOE,
Defendants.

ORDER FOR REMOVAL OF CAUSE TO
UNITED STATES COURT

Upon reading and filing the petition of Young Iron Works, a corporation, the defendant in the above entitled action, and upon filing the bond, and good and sufficient sureties having been offered by said defendant in the premises, and the same being by me, the Judge of said Superior Court, duly accepted, it is hereby ordered that no further proceedings be had in this cause, and the removal of the same to the District Court of the United States for the Northern District of California, Northern Division, be, and the same is, hereby allowed and ordered, in accordance with the aforesaid petition and the statute of the United States in such case made and provided.

Dated: July 1, 1947.

PETER J. SHIELDS,

Judge of the Superior Court.

[Endorsed]: Filed July 1, 1947. [23]

[Title of District Court and Cause.]

NOTICE OF MOTION TO QUASH
SERVICE OF SUMMONS

To LeRoy Cowan, the above named plaintiff, and
to his attorneys Archibald D. McDougall, and
Mento and Buchler:

Please take notice that the undersigned, appearing specially for the purpose of this motion, will move this Court, at the Courtroom of said Court, United States Post Office Building, 8th and "I" Streets, Sacramento, California, on the 1st day of September, 1947, at 3:00 o'clock in the afternoon of that day, or as soon thereafter as counsel can be heard, for an order quashing the attempted service of summons herein on the Young Iron Works, a corporation, defendant in the above entitled cause, on the following grounds:

1. That said attempted service of summons upon defendant Young Iron Works, a corporation, was made by plaintiff on the 2nd day of June, 1947, by delivering to the Secretary of State, State of California, a statement of the address of the above named defendant Young Iron Works, a corporation, to wit: 2959 First Avenue, South, Seattle, Washington, together with a copy of the Summons and Complaint issued and filed in the case of

Cowan vs. Young Iron Works, a corporation, et al., No. 75681, Department 2, of the Superior Court of the State of California, in and for the [24] County of Sacramento,

with instructions to said Secretary of State to give notice to said Young Iron Works of the process served upon him in said action, and to forward a copy of such process to said Young Iron Works, at said address in accordance with the provisions of Section 406(a) of the Civil Code of California.

2. That the said defendant is a corporation of the State of Washington, with its principal place of business in Seattle, State of Washington, and was not on the 2nd day of June, 1947, or at any time during the year 1947, or at any time prior thereto, and is not now a resident or citizen of the State of California, or of the Northern District of California, Northern Division, and was not on the 2nd day of June, 1947, or at any other time during said year, or at any time prior thereto, and is not now, transacting or carrying on any business within the State of California, or within the Northern District of California, Northern Division, as defined by Section 405 of the Civil Code of California, and is not now subject to the jurisdiction of the above entitled Court, or to the jurisdiction of any Court, either State or Federal, within the State of California; that said defendant has not authorized said Secretary of State, nor any deputy of said Secretary of State, nor any other person within the State of California, to receive service of process or summons for or on its behalf, and has not waived service or process herein by voluntary appearance or otherwise.

Said motion will be made and based upon this notice, upon affidavit of Paul J. Isaacson, a certi-

fied and authenticated copy of which is on file herein, and a copy of which was heretofore, to wit, on the 30th day of June, 1947, served upon you; upon the certificate of Frank M. Jordan, Secretary of State, State of California, dated the 3rd day of July, 1947, a copy of which is served herewith, and upon all the files and papers in said cause. [25]

GERALD R. JOHNSON,
JOHNSON, WARE AND
DAVIES,

By /s/ GERALD R. JOHNSON,

Attorneys for defendant, Young Iron Works, a corporation, appearing specially and for the purpose of this motion only.

In the opinion of counsel, the foregoing motion is well taken and is not interposed for the purpose of delay.

Dated: July 28, 1947.

/s/ GERALD R. JOHNSON.

[Endorsed]: Filed July 29, 1947. [26]

[Title of District Court and Cause.]

ORDER GRANTING LEAVE TO
TAKE DEPOSITIONS

In appearing to the satisfaction of the Court that the above-named defendant Young Iron Works, a corporation, has filed herein a motion to quash service of summons on the grounds that said defendant is a foreign corporation and is not doing business in the State of California, and it is further appearing that plaintiff is desirous of taking the depositions of Thomas H. Lynn and Albert S. Weaver, Jr., for the purpose of obtaining testimony for use in opposition to said motion and to disprove certain of the allegations contained in the affidavit filed herein on behalf of said defendant in support of said motion; and good cause appearing therefor:

It is hereby ordered that said plaintiff be and he is hereby granted leave to take the said deposition of said Thomas H. Lynn and Albert S. Weaver, Jr., upon oral examination for use in connection with the said motion hereinabove referred to.

Dated this 18th day of August, 1947.

DAL M. LEMMON,
United States District Court
Judge.

[Endorsed]: Filed Aug. 18, 1947. [27]

[Title of District Court and Cause.]

OPINION AND ORDER

This case was transferred to this court from a state court upon diversity of citizenship. Young Iron Works has moved under rule 12(b), Rules of Civil Procedure, to quash service of summons upon it.

The supporting affidavit states that the defendant corporation is organized under the laws of the State of Washington and that it is engaged in a manufacturing business in that state. It has no stock of goods and maintains no office or place of business in California. The customers of the manufactured products are dealers who handle mining, quarrying, logging and marine equipment, or other users, all of whom place their orders and buy direct for their own accounts. Shipments are made from Washington to California to fill these orders. The corporation has one salesman who resides in Washington and who visits prospective customers in various western states once or twice a year. No installation, engineering or maintenance service is performed by defendant in California. No sales or transactions are made in this state for the account of the corporation. Depositions were received in evidence of two officials of the Weaver Tractor Company, a California corporation. These depositions reveal that the Weaver concern [28] has the exclusive right to handle defendant's products in what is loosely referred to as the "Sacramento Valley area" and that catalogues are supplied by

defendant to Weaver. A representative of defendant visits Weaver's place of business in California approximately once each six months, and "checks over" the Weaver stock, "discusses some of the features of his line of merchandise" and occasionally accompanys the Weaver salesmen when they call upon the "larger logging accounts." If a customer claimed the product defective, Weaver would send it to defendant. Defendant's decision as to whether a credit for a claimed defect is to be allowed is final.

Service may be made upon a foreign corporation in the manner prescribed by the law of the state, Rule 4(d) (7) F.R.C.P. Whether defendant was doing business depends upon its activities at the time of the service of the summons. *Jameson v. Simonds Saw Co.* 2 Cal. App. 582. They were as above outlined.

The early concept was that before a foreign corporation can be subjected to the jurisdiction of a state, the corporation must have consented to the jurisdiction. Consent might be implied by its activities. The "consent theory" has given away to the "corporate presence theory." *West Publishing Co. v. Superior Court*, 20 Cal. (2d) 720. The later theory is thus expressed in *Philadelphia & R. R. Co. v. McKibbin*, 243 U. S. 264, "a foreign corporation is amenable to process to enforce a personal liability, in the absence of consent, only if it is doing business within the state in such manner and to such extent as to warrant the inference that it is present there." The extent and nature of the

corporation's activities sufficient to constitute presence is often a perplexing problem. In attempting to lay down a more explicit guide the Supreme Court of Oklahoma in *Wills v. National Mineral Co.*, 55 P (2d) 449 stated: [29]

“Business is largely the barter, sale, or exchange of things of value, usually property. ‘Doing’ business is therefore the engaging in such pursuit. The doing of business involves not only the ownership, possession, or control of property, but such functions as dealing with others in reference to the property, the exercise of discretion, the making of business decisions, the execution of contracts. It includes the functions of marketing the product, by advertising and solicitation, and of collecting for the sold product. It may conservatively be said that wherever an important combination of these functions is being performed, business is being done. A corporation moves and acts only in the persons of its agents, be they officers or otherwise, within the scope or apparent scope of their authority. Therefore, wherever the agent is performing important business functions for the corporation, involving the exercise of discretion, whereunder contractual relationships are by his efforts established between the corporation and others in that place, the corporation is ‘present’ and doing business.”

The functions performed by the defendants' agent is not of such purport to constitute doing business.

Had he been in the state simply for the taking of orders, this would not amount to doing business. *International Harvester Co. v. Comm. of Kentucky*, 234 U. S. 579; *Roark v. Am. Distilling Co.*, 97 F. (2d) 297; cases cited in 146 A. L. R. at page 948. The agent did not take orders. He merely advised Weaver as to his stock and defendant's product. On the infrequent and irregular occasions he accompanied the Weaver salesmen to visit Weaver customers his actions were a courtesy to Weaver. His principal had no relations with those customers. Defendant was not making sales to them or otherwise dealing with them either through its representatives or through Weaver. Likewise the replacement of parts as performed by defendant is insufficient to constitute presence within the state. The replacements are made pursuant to the contractual relations with Weaver and are of no greater weight in determining the issue than are the original interstate purchases. [30]

We do not have here the undertaking to service or keep in repair in California the produce sold which would make the corporation amenable to service of process in that state. *Milbank v. Standard Motor Construction Co.* 132 Cal. App. 67; *Vilter Mfg. Co. v. Rolaff*, 110 F. (2d) 491; *State v. District Ct.*, 57 P. (2d) 772; *Gray Co. v. Ward*, 145 S. W. (2d) 650; or the plurality of transactions, "the combination of which would constitute doing business" as existed in *Wells v. National Mineral Co.* 55 P. (2d) 449 and *Dahl v. Collette*, 279 N. W. 561. The situation here and that in *Carroll Electric*

c. v. Freed Eisemann Radio Corp. 50 F (2d) 993 and Thew Shovel Co. v. Superior Court, 35 Cal. App. (2d) 183, cases upon which plaintiff relies heavily, are quite dissimilar. In the Carroll case the contract between the manufacturer and the distributor created a "limited agency." "The distributor was not an independent merchant dealing with the manufacturer upon its own initiative, but conducted its business in the District of Columbia in conformity with the stipulations contained in the contract." Here Weaver is an independent merchant and is in no wise under the control or discretion of defendant. The quotation from the Thew case, which affords comfort to plaintiff, must be read in the light of the facts to which it relates. Often an announced legal principle is misleading when torn from its moorings. Generalization, must be valued in the light of the circumstances which gave them expression. There the manufacturer reserved the right to make sales to customers of certain classes without paying discounts or commissions to the distributors, prices and conditions of sales were fixed by the manufacturer, title to consigned goods was retained by the manufacturer and contracts for the resale and notes on account of deferred payments were assigned to and accepted by the manufacturer, installation service was provided and other activities performed by it.

Defendant exercised no control over Weaver. [31] Weaver bought the products f.o.b. Seattle. Title to the purchased goods passed to Weaver before they

came into California. Defendant made no sales, and neither owned nor possessed any of its product in that state. It neither installed nor serviced the manufactured articles. Weaver was free to sell as it chose, unhampered by direction from defendant. Defendant did not make the business decisions, market its product there, solicit sales on its account, execute contracts of sale or make collections. The facts here point no stronger, if as strong, to doing business as those found in *McMillan Process Co. v. Brown* 33 Cal. App. (2d) 279 to be inadequate. See also *Hinchcliffe Motors v. Willys Overland Motors* 30 F. Supp. 580 and *Davega Inc. v. Lincoln Furniture Mfg. Co.* 29 F. (2d) 164.

I hold that the facts disclose that defendant did not engage in the regular continued and sustained course of business in California necessary to constitute doing business there. Rather, its activities were casual or occasional. *Mueller Brass Co. v. Alexander Milburn Co.* 152 F. (2d) 142.

It is ordered that the service of summons upon the defendant be and it is quashed.

Dated: January 28, 1948.

DAL M. LEMMON,
United State District Judge.

[Endorsed]: Filed Jan. 28, 1948.

Entered in Civil Docket Jan. 29, 1948. [32]

United States District Court for the Northern
District of California, Northern Division

No. 5870

LeROY COWAN,

Plaintiff,

vs.

YOUNG IRON WORKS, a corporation,

Defendant.

DISMISSAL OF ACTION AS TO DEFEND-
ANTS FIRST DOE, SECOND DOE AND
THIRD DOE

To the Clerk of the Above Entitled Court:

The above entitled action is hereby dismissed with-
out prejudice as to the defendants sued herein under
the fictitious names of First Doe, Second Doe and
Third Doe.

ARCHIBALD D. McDOUGALL,
Attorney for Plaintiff.

[Endorsed]. Filed March 19, 1948. [33]

CIVIL DOCKET

Date	Filings—Proceedings
7/28/47— 1	Filed record on removal (Clerk's fees—Defendant, \$15.00) Complaint
7/29/47— 2	Filed notice of motion to quash service of summons
8/18/47— 3	Filed order granting leave to take depositions
8/19/47— 4	Filed praecipe Issued subpoena
	5 Filed order allowing use of subp, etc
	6 Filed notice of time & place of taking depositions
9/ 9/47— 7	Filed depositions of A. S. Weaver, Jr. and T. H. Lynn
9/10/47—	Ord mo. to quash service of summons contd Oct. 6
9/16/47— 8	Filed notice of filing depositions
10/ 6/47—	Ord mo. to quash service of summons con. Oct 13
10/16/47—	Ord contd Nov. 17—notified attys
11/15/47— 9	Filed memo of auth's. in opposition to motion to quash service of summons
11/17/47—	Hearing; ord briefs filed in 10-10 days, mo. to quash then to be submitted
11/28/47—10	Filed reply brief of deft Young Iron Works
12/20/47—11	Filed pltf's closing memo in opposition to mo to quash
12/31/47—	Ord mo to quash service of summons submitted
1/28/48—12	Filed opinion and order Ord mo to quash service of summons granted
1/29/48—	Entered opinion & order, Vol 13 #99
2/ 6/48—13	Filed notice of order quashing service of summons
3/19/48—14	Filed dismissal as to defts First, Second & Third Does
	15 Filed notice of appeal to CCA from order quashing service of summons—notified deft (Clerk's fee—Plaintiff, \$5.00)
	16 Filed bond on appeal
3/30/48—17	Filed stip for designation of record on appeal
3/31/48—18	Filed stip & order for transmission of original depositions, etc.

[Title of District Court and Cause.]

NOTICE OF APPEAL TO CIRCUIT COURT
OF APPEALS

Notice is hereby given that LeRoy Cowan, the above-named plaintiff, hereby appeals to the United States Circuit Court of Appeals for the Ninth Circuit from that certain order made on January 28, 1948 and entered on January 29, 1948, in the above entitled action, wherein it was ordered that the service of summons in the above action upon the above named defendant Young Iron Works, a corporation, be quashed.

ARCHIBALD D. McDOUGALL,
Attorney for Appellate,

LeRoy Cowan.

[Endorsed]: Filed March 19, 1948. [35]

[Title of District Court and Cause.]

BOND ON APPEAL FOR COSTS

Know All Men by These Presents: That the undersigned, Standard Accident Insurance Company, a corporation duly organized and existing under the laws of the State of Michigan, and duly authorized to transact and do a general surety business in the State of California, is held and firmly bound unto the above named defendant, Young Iron Works, a corporation, in the full and just sum of Two Hundred Fifty and No/100 (\$250.00) Dollars, to the payment of which sum, well and truly to be made, the said Standard Accident Insurance Company, a corporation, binds itself, its successors and

assigns, jointly and severally, firmly by these presents.

Whereas, lately at the District Court of the United States for the Northern District of California, Northern Division, in a suit pending in said Court, between the above named plaintiff, LeRoy Cowan, and above named defendant, Young Iron Works, a corporation, a certain order was made and entered in said Court [36] on or about January 29, 1948, quashing service of summons in the above action on said defendant; and

Whereas, said above named plaintiff LeRoy Cowan, has filed a notice of appeal herein, appealing to the United States Circuit Court of Appeals for the Ninth Circuit, from said order for the purpose of reversing the same.

Now, Therefore, the condition of this obligation is such that if the said above named plaintiff, LeRoy Cowan, shall pay all costs if the said appeal is dismissed or the said order affirmed, or such costs as the appellate court may award if the said order appealed from is modified, then this obligation shall be null and void, otherwise it shall remain in full force and effect. In Witness Whereof, the said undersigned surety has caused these presents to be executed and its official seal attached by its duly authorized Attorney-in-Fact at Sacramento, California, the 18th day of March, 1948.

[Seal]

STANDARD ACCIDENT
INSURANCE COMPANY.

By /s/ S. M. SWANSON,
Attorney-in-Fact.

Premium on this Bond \$10.00.

State of California,
County of Sacramento—ss.

On this 18th day of March in the year One Thousand Nine Hundred and Forty-eight before me, Helen S. Bailey, a Notary Public in and for the said County of Sacramento, residing therein, duly commissioned and sworn, personally appeared S. M. Swanson, known to me to be the Attorney-in-fact of the Standard Accident Insurance Co., the Corporation that executed the within instrument, and known to me to be the person who executed the said instrument on behalf of the Corporation therein named and acknowledged to me that such Corporation executed the same.

In Witness Whereof, I have hereunto set my hand and affixed my official seal in the County of Sacramento the day and year in this certificate first above written.

/s/ HELEN S. BAILEY,

Notary Public in and for the County of Sacramento,
State of California.

My commission expires October 13, 1948.

[Endorsed]: Filed March 19, 1948. [37]

[Title of District Court and Cause.]

STIPULATION FOR DESIGNATION OF CON-
TENTS OF RECORD ON APPEAL

To the Clerk of the Above Entitled Court:

It is hereby stipulated by and between the above named plaintiff, LeRoy Cowan, and the above named

defendant, Young Iron Works, a corporation, the parties to the appeal taken herein by said plaintiff, that the following parts of the record, proceedings and evidence in the above entitled action are hereby designated to be included in the record on appeal herein, and that when so included, the same shall constitute a complete record for use on said appeal, to wit:

1. The following documents removed from the Superior Court of the State of California, in and for the County of Sacramento, and filed in the above entitled action on January 28, 1947:

- (a) Complaint.
- (b) Order directing service of summons on foreign corporation in manner prescribed by Section 406(a) of the California Civil Code.
- (c) Affidavit for order directing service of process on foreign corporation under Section 406(a) of the California Civil Code.
- (d) Affidavit of Paul J. Isaacson, which is attached to a certain document removed from said Superior Court and entitled "Notice of Special Appearance and Motion to Quash Summons and Service Thereof."
- (e) Petition for removal of cause to United States District Court.
- (f) Order for removal of cause to United States Court.

2. The following documents and records originally filed in the above entitled Court following the

removal of the above action from said Superior Court.

- (a) Notice of motion to quash service of summons.
- (b) Order granting leave to take depositions.
- (c) Depositions (and exhibits attached thereto) of Albert S. Weaver, Jr., and Thomas H. Lynn.
- (d) Opinion and order filed on January 28, 1948.
- (e) Dismissal of action as to defendants First Doe, Second Doe and Third Doe.
- (f) A list of entries in the "Civil Docket."
- (g) Notice of appeal with date of filing thereon.
- (h) Bond on appeal.
- (i) This stipulation of the parties for designation of contents of record on appeal.
- (j) Stipulation and order for transmission of original depositions of Albert S. Weaver, Jr. and Thomas H. Lynn to Appellate Court as part of record on appeal.

ARCHIBALD D. McDOUGALL,
Attorney for Plaintiff,
LeRoy Cowan.

JOHNSON, WARE & DAVIES,
By EDMUND DAVIES,

Attorneys specially appearing for defendant Young Iron Works, a corporation.

[Endorsed]: Filed March 30, 1948. [40]

[Title of District Court and Cause.]

STIPULATION AND ORDER FOR TRANS-
MISSION OF ORIGINAL DEPOSITIONS
OF ALBERT S. WEAVER, JR., AND
THOMAS H. LYNN, TO APPELLATE
COURT AS PART OF RECORD ON
APPEAL

It is hereby stipulated that the original depositions of Albert S. Weaver, Jr., and Thomas H. Lynn on file in the above-entitled action may be sent by the Clerk of the above-entitled Court to the Circuit Court of Appeals for the Ninth Circuit as part of the record on appeal herein, in lieu of a copy thereof, and that upon completion of the printed record in accordance with Rule 19 of Rules of the United States Circuit Court of Appeals for the Ninth Circuit, said original depositions may be returned to the above-entitled Court.

ARCHIBALD D. McDOUGALL,
Attorney for Plaintiff.

JOHNSON, WARE & DAVIES.
By EDMUND DAVIES,
Attorneys for Defendant, Young Iron Works, a
Corporation, Appearing Specially. [41]

Order

Pursuant to the foregoing stipulation, it is hereby ordered that the original depositions referred to in the foregoing stipulation may be sent by the Clerk

of the above-entitled Court to the Circuit Court of Appeals for the Ninth Circuit as part of the record on appeal herein in lieu of a copy thereof, and that said depositions shall be returned to the above-entitled Court upon completion of the printing of said record on said appeal.

DAL M. LEMMON,

Judge of the District Court.

[Endorsed]: Filed Mar. 31, 1948. [42]

CERTIFICATE OF CLERK, U. S. DISTRICT
COURT, TO RECORD ON APPEAL

I, C. W. Calbreath, Clerk of the United States District Court for the Northern District of California, do hereby certify that the foregoing pages, numbered 1 to 42, inclusive, contain a full, true and correct transcript of certain records, and proceedings in the case of LeRoy Cowan vs. Young Iron Works, a corporation, No. 5870, as the same now remain on file and of record in this office; said transcript having been prepared pursuant to and in accordance with the Stipulation for Designation of Contents of Record on Appeal, copy of which is embodied herein.

I further certify that the cost of preparing and certifying the foregoing Record on Appeal is the sum of Four and 70/100 (\$4.70), and that the same has been paid to me by the attorney for the appellant herein.

In Witness Whereof, I have hereunto set my hand and the official seal of said District Court, this 20th day of April, A.D. 1948.

[Seal] C. W. CALBREATH,
Clerk.

By /s/ F. M. LAMPERT,
Deputy Clerk. [43]

United States District Court for the Northern
District of California, Northern Division

No. 5870

LeROY COWAN,

Plaintiff,

vs.

YOUNG IRON WORKS, a Corporation, FIRST
DOE, SECOND DOE and THIRD DOE,
Defendants.

Wednesday, August 27, 1947

Depositions of Albert S. Weaver, Jr., and Thomas
H. Lynn, witnesses produced on behalf of plain-
tiff, taken before Elma A. Pipher, a Notary
Public in and for the County of Sacramento,
State of California.

Appearances:

For the Plaintiff: Archibald D. McDougall, Esq.,
California State Life Building, Sacramento, Cali-
fornia; Lloyd G. Buchler, Esq., Capital National
Bank Building, Sacramento, California.

Counsel Specially Appearing for Defendant Young Iron Works: Johnson, Ware & Davies, by Edmund Davies, Esq., California State Life Building, Sacramento, California. [1*]

NOTICE OF TIME AND PLACE OF TAKING DEPOSITIONS

To the Above-Named Defendant, Young Iron Works, a corporation, and to its attorneys, Gerald R. Johnson, and Johnson, Ware and Davies:

You and each of you will please take notice that LeRoy Cowan, the plaintiff in the above-entitled action, will take the depositions of Thomas H. Lynn, Sacramento, California, and Albert S. Weaver, Jr., Sacramento, California, before Elma A. Pipher, a Notary Public in and for the County of Sacramento, State of California, at Room 710, California State Life Building, Sacramento, California, on the 27th day of August, 1947, at the hour of 10:00 o'clock a.m., and that said depositions will be taken for the purpose of obtaining testimony for use in opposition to the motion filed herein by said defendant for an order to quash service of summons herein.

You are hereby further notified that said witnesses, Thomas H. Lynn, and Albert S. Weaver, Jr., will be required to bring and produce at the time and place of the taking of the said deposition all of the records, statements of account, agreements,

* Page numbering appearing at foot of page of original Reporter's Transcript of Record.

contracts, and other documents in the possession of Weaver Tractor Company, located at 19th and "T" Streets, Sacramento, California, showing the arrangement under which said Weaver Tractor Company handles the distribution and sale of articles manufactured by said defendant Young Iron Works, the [2] volume of business done in connection therewith, and the relationship existing between said Weaver Tractor Company and said defendant Young Iron Works, together with a copy of all catalogues furnished said Weaver Tractor Company by said Young Iron Works, setting forth the various kinds of mechanical appliances manufactured by said Young Iron Works, and sold to the public generally.

Dated this 19th day of August, 1947.

/s/ ARCHIBALD D. McDOUGALL,
Attorney for Plaintiff,
LeRoy Cowan.

Affidavit of Service

State of California,
County of Sacramento—ss.

Harold T. King, being first duly sworn, deposes and says:

That he is and was at the time of the service of the papers herein referred to, a citizen of the United States, over the age of eighteen years, and not a party to the within-entitled action; that on the 19th day of August, 1947, he [3] personally

served a copy of the foregoing Notice of Time and Place of Taking Depositions on Edmund Davies, attorney for the above-named defendants, by delivering to and leaving with the said Edmund Davies, at his office in Suite 1100, California State Life Building, a copy of the said notice.

HAROLD T. KING.

Subscribed and sworn to before me this 19th day of August, 1947.

LLOYD BUCHLER,

Notary Public in and for the County of Sacramento, State of California. [4]

[Title of District Court and Cause.]

State of California,

County of Sacramento—ss.

I, Elma A. Pipher, hereby certify that I am an official phonographic reporter of the Superior Court of the State of California, in and for the County of Sacramento, and a competent phonographic writer; that I am a Notary Public in and for the County of Sacramento, State of California, and that I am not related to nor connected with any of the parties to the above-entitled action nor their counsel, and am not in any manner interested in the event of said action.

That pursuant to written notice to take deposition, subpoena and affidavit of service in support thereof, filed with the United States District Court for the Northern District of California, Northern Division, a copy of which is hereto attached and

made a part of this certificate, upon this Wednesday, the twenty-seventh day of August, 1947, at the hour of 10:00 o'clock in the morning of said day, at Room 710, California State Life Building, Sacramento, California, personally appeared before me Albert S. Weaver, Jr., and Thomas H. Lynn, witnesses produced and whose depositions were noticed to be taken on behalf of plaintiff in the above-entitled action; also appeared Archibald D. McDougall, Esq., and Lloyd G. Buchler, [5] Esq., counsel on behalf of plaintiff; also appeared Edmund Davies, Esq., of counsel specially appearing for defendant Young Iron Works in said action.

Pursuant to said written notice, a copy of which is hereto annexed and made a part of this certificate, the said witnesses, Albert S. Weaver, Jr., and Thomas H. Lynn, were by me first duly and regularly sworn to testify the truth, the whole truth and nothing but the truth in the matter of their said depositions, and the taking thereof then proceeded, upon direct examination, conducted by Archibald D. McDougall, Esq., of counsel on behalf of said plaintiff, and cross-examination conducted by Edmund Davies, Esq., of counsel specially appearing for defendant Young Iron Works.

That said depositions, including all questions propounded to and answers given by said witnesses, all objections of counsel in respect of questions propounded, all motions of counsel in respect of testimony given, and all matters incident to the taking of said depositions were by me taken down in phonographic writing, and I thereafter caused my said

phonographic writing to be transcribed into long-hand typewriting for submission to the said witnesses for their perusal, correction and signature.

That said transcription is a true and correct record, and is in the words and figures following, to wit:

Mr. Davies: Before the witness is sworn, Mrs. Pipher, I would like to say for the record that we are appearing specially for the Young Iron Works, who have filed a motion to quash service with summons. That special appearance is being made now, and we reserve at this time and throughout the taking of Mr. Weaver's deposition as well as that of Mr. Lynn. I also want to state for the purpose of the record that we are appearing specially in this matter, pursuant to notice of the taking of the depositions of Mr. Weaver and Mr. Lynn, which notice was [6] made pursuant to an order of the Federal Court permitting the taking of the depositions in connection only with the motion that I have just referred to.

Testimony of

ALBERT S. WEAVER, JR.

witness produced on behalf of plaintiff herein; sworn.

Direct Examination

By Archibald D. McDougall, Esq., of counsel on behalf of plaintiff:

Q. Your name in full is Albert S. Weaver, Jr., is it not? A. Yes.

Q. Where do you reside, Mr. Weaver?

(Deposition of Albert S. Weaver, Jr.)

A. 1445 Forty-fifth Street, Sacramento.

Q. What is your business?

A. Tractor dealer.

Q. Are you connected with Weaver Tractor Company? A. Yes.

Q. Is Weaver Tractor Company a corporation?

A. Yes.

Q. And what is your official capacity?

A. President.

Q. And as president are you personally familiar with the various ramifications of the business of the Weaver Tractor Company? A. Fairly so.

Q. And where is the place of business of Weaver Tractor Company? A. 1900 T Street.

Q. How long has it been in business at that address? A. About six—about seven years.

Q. Does the Weaver Tractor Company have anything to do with products manufactured by Young Iron Works? A. We sell them.

Q. Young Iron Works is a corporation located in the State of Washington, is it not?

A. We believe so. [7]

Q. I mean there is nothing to the contrary as far as you know in respect to——

A. (Interposing): It is the State of Washington. I believe it is a corporation.

Q. You know it is in Washington?

A. Yes.

Q. Seattle is their place of business, is that correct? A. Yes.

(Deposition of Albert S. Weaver, Jr.)

Q. What does Weaver Tractor Company do with respect to the handling of Young Iron Works products?

Mr. Davies: I object to any questions relating to what disposition Weaver Tractor Company does with the products that you allege to be that of Young Iron Works. This disposition is being taken for the purpose of showing the nature of the business relationship between Weaver Tractor Company and Young Iron Works.

Mr. McDougall: Is that all?

Mr. Davies: That is all.

Mr. McDougall: Would you read the question to the witness, please, Mrs. Pipher?

(The question was read by the reporter.)

A. (By the Witness): We maintain a stock of them, of their products. As sales are made or the stock is depleted we issue purchase orders from time to time, and they are then shipped to us. We display them and sell them to the trade.

Q. (By Mr. McDougall): In other words, it is true, is it not, that Weaver Tractor Company handles products manufactured by Young Iron Works?

A. Yes.

Q. And generally speaking, what type of products are they?

A. Our end of it is logging rigging. They have other products, I believe.

Q. Now, when you say your end of it is logging and rigging, by that do you mean that your firm

(Deposition of Albert S. Weaver, Jr.)

handles mechanical appliances [8] pertaining to logging and rigging, such as swivel bolts, and various other commodities of that kind?

A. Yes.

Q. Now, how long has Weaver Tractor Company been handling products manufactured by Young Iron Works?

A. In a fairly large way since 1945.

Q. And prior to that time to your personal knowledge was there any other firm in Sacramento handling their products? A. Yes.

Q. What firm was it?

A. Capital Tractor.

Q. And were they handling Young Iron Works products as far as you know along the same lines as you now are handling them?

A. I believe so.

Q. Under the same arrangement as you now dispose of them, is that right? A. Yes, sir.

Mr. Davies: That is, if you know.

Mr. McDougall: I am merely asking of your own knowledge.

Witness: Oh, I do not know what their deal was with Young, but I presume it was the same as ours.

Q. (By Mr. McDougall): Now, can you tell me, Mr. Weaver, how it came about that Weaver Tractor Company commenced handling the products manufactured by Young Iron Works?

A. There is a logging congress which has a meeting of all the loggers and suppliers. That takes place once a year. One of our men was up there, saw

(Deposition of Albert S. Weaver, Jr.)

the Young display, and entered into negotiations so that we handled their account.

Q. Now, do you personally happen to be familiar with the arrangement under which you handle their account in California?

A. Yes, I think so.

Q. Will you tell me what it is?

A. We have what we call an exclusive arrangement for the Sacramento trade area, which they market through no people other [9] than ours. We buy it from them, sell it to the trade, and that is about it. There is a rather complicated discount procedure, and I don't know what the exact discounts are at the present time.

Q. Now, you mention an exclusive, or rather an arrangement for the exclusive handling of their products in the Sacramento area. What do you mean by that, Mr. Weaver?

A. That if a competitor or a user of their products that lived in this trade area, which is roughly the Sacramento Valley, sent an order in to Young Iron Works, it would be referred to us to be filled.

Q. By that you mean that the only concern in the Sacramento area, which comprises, we will say, the Sacramento Valley, from whom officially in this area could be purchased Young Iron Works products would be the Weaver Tractor Company?

A. The Sacramento Valley is too large an area, but otherwise it is correct.

Q. Can you give me a little more restricted definition of the area, that is by counties? Do you hap-

(Deposition of Albert S. Weaver, Jr.)

pen to know offhand what counties you think this exclusive arrangement is over?

A. It is pretty loose. I think this will illustrate your point: When this started, Stockton was presumed to be part of the Sacramento trade area. Some places they asked us if we objected to their appointing a dealer in Stockton. We said no, we couldn't handle it that far to the south, and probably around the Grass Valley area, which at the present time is the northern boundary.

Q. Well, how far north would you go?

A. About Grass Valley.

Q. That would be generally speaking the Nevada County, Sacramento County, Yolo County——

A. Yes, Eldorado, Amador.

Q. Eldorado and Amador Counties?

A. Yuba. [10]

Q. And within that particular area then it is true, is it not, Mr. Weaver, that the only concern that is handling Young Iron Works products is the Weaver Tractor Company, of which you are president?

A. Yes, as far as its logging hardware, yes, yes.

Q. And if any consumer desires to purchase any of the Young Iron Works products, that is necessary, under your arrangement with the Young Iron Works, for the consumer to purchase the product from your firm? A. Weaver Tractor Company.

Mr. Davies: We object to the question on the grounds it is calling for an answer that has to do with the relationship dealings between the Weaver

(Deposition of Albert S. Weaver, Jr.)

Tractor Company and Young Iron Works, and that is not the question involved.

Mr. McDougall: Would you read the question, Mrs. Pipher?

(The question was read by the reporter.)

A. (By the Witness): No. He can go to other dealers, Stockton, Grass Valley, Redding.

Q. (By Mr. McDougall): I am referring to purchasing in the area over which you have the exclusive agency. A. Yes.

Q. In other words, your answer would be yes to my previous question?

A. If he buys it here.

Q. That is what I am getting at. And that was the understanding that you had with Young Iron Works when you started handling their products in this area? A. Yes.

Q. And has that arrangement been in existence since the year 1945 when you started handling their products? A. Yes, sir.

Q. Do you happen to have any correspondence or memoranda or agreement with reference to your arrangement, Mr. Weaver? A. Yes.

Q. May I see what you have in that regard?

A. (Presenting Letter to Mr. McDougall): That is the original letter [11] from Grady.

Q. And to identify Mr. Grady, he is connected with Weaver Tractor Company?

A. He is our logging salesman, yes.

Q. Now, have you other correspondence beside this?

(Deposition of Albert S. Weaver, Jr.)

A. (Presenting letter to Mr. McDougall.)

Q. Now, you have shown me, Mr. Weaver, a letter dated January 18, 1945, addressed by Weaver Tractor Company to Young Iron Works, Seattle, Washington. Is this the office copy? A. Yes.

Q. Of that letter? A. Yes.

Q. And the original was deposited in the mail and sent to Young Iron Works? A. Yes.

Mr. McDougall: We offer this letter in evidence and ask to have the same marked as Plaintiff's Exhibit 1 in connection with this deposition.

Mr. Davies: We object to the offer upon the ground the proper foundation has not been laid.

(The paper to which reference last is made was marked Plaintiff's Exhibit 1 and is hereto attached and made a part of this deposition.)

Q. (By Mr. McDougall): Does this letter come from the files of Weaver Tractor Company?

A. Yes.

Q. And did you procure it from the files?

A. Yes, our office.

Q. Of the Weaver Tractor Company?

A. I did, yes.

Mr. McDougall: It will probably expedite the matter if I read these as we proceed. Letter dated January 18, 1945, addressed to Young Iron Works, Seattle, Washington:

"Gentlemen: During my recent trip to the Logging Congress, I called upon the Interstate Tractor Co. in Portland, Oregon, and was very much impressed by your line of logging blocks, butt hooks, clevises and so forth.

(Deposition of Albert S. Weaver, Jr.)

"We carry a rather extensive line of logging supplies in Sacramento and service the pine area in this region, and in the past have enjoyed a very nice business in this area. However, I [12] believe we could improve our position materially with your line.

"Will you please let us know if you are in the position to service us. If such is the case, without any further correspondence from us, will you send us 150 of your catalogues so that we can incorporate them in a loose leaf catalogue that we will put out for distribution to the logging industry throughout this area.

"Yours very truly, Weaver Tractor Company, Frank B. Grady."

Q. (By Mr. McDougall): Now, Mr. Weaver, who is Frank B. Grady?

A. He is our logging salesman.

Q. And at the time this letter was written on January 18, 1945, was he connected with Weaver Tractor Company?

A. In that capacity, yes.

Q. As a logging salesman? A. Yes.

Q. And he is the gentleman that wrote this letter, is that correct?

Mr. Davies: We will make the same objection upon the ground that the proper foundation has not been laid.

Q. (By Mr. McDougall): Now, you have produced, Mr. Weaver, a letter from Young Iron Works, dated January 24, 1945, addressed to Mr.

(Deposition of Albert S. Weaver, Jr.)

Frank B. Grady, Weaver Tractor Co., 1900 T Street, Sacramento, California. Was that letter received by Weaver Tractor Company?

A. Yes.

Q. And that is the original of the letter, is it?

A. Yes.

Q. And that letter was obtained by you from your files, that is Weaver Tractor Company files, for the purpose of having same produced at this deposition, was it not? A. Yes.

Mr. McDougall: We offer this letter in evidence and desire to have the same marked as Plaintiff's Exhibit next in order.

Mr. Davies: We make the objection that the proper foundation has not been laid.

(The paper to which reference last is made was marked Plaintiff's Exhibit 2, and is hereto attached and made a part of this deposition.)

Mr. McDougall: The letter reads as follows: This is on the [13] letterhead of Young Iron Works, dated January 24, 1945, addressed to Mr. Frank B. Grady, Weaver Tractor Co., 1900 T Street, Sacramento, California:

"Dear Mr. Grady: We wish to thank you very kindly for your letter of January eighteenth and contents noted. We are only sorry that the writer did not have the opportunity to make your acquaintance at Seaside, Oregon. However, we are glad that you stopped at the Interstate in Portland and saw the job that they are doing for us in Oregon.

(Deposition of Albert S. Weaver, Jr.)

“We wish to advise you that we are very much interested in having you as our representative in your territory for our line of blocks, tools and manganese hooks. Under separate cover we are sending you one of our new catalogues. We also wish to advise that in the next few days we will have our new circular out on our line of new manganese butt hooks and choker hooks, as well as butt rigging.

“You ask in your letter if we are in a position to take care of you, and we wish to advise you that we are. You will note that the catalogue we are sending you is bound, and as you mentioned that you wanted catalogues for a loose leaf binder, please let us know if you want us to send you 150 more of these.

“Also enclosed herewith is one of our discount sheets for distributors. Its prices are f.o.b. Seattle.

“For your information we wish to advise you that we have had a tentative arrangement with the Capitol Tractor and Equipment Company, but we are canceling them out as of today.

“The writer will be anxious to call on you the first time he gets down in your territory.

“Thanking you very kindly, we wish to remain very truly yours, Young Iron Works.”

(Deposition of Albert S. Weaver, Jr.)

Signed in ink, "Paul Isaacson," and then signed in type, "Paul Isaacson, President."

Q. (By Mr. McDougall): Now, Mr. Weaver, you have also shown me a [14] letter dated January 30, 1945, addressed to Young Iron Works and signed, "A. S. Weaver, Jr."

A. That is correct.

Q. Is that letter written by you personally?

A. No. It is written by Grady and signed by me.

Q. You wrote this letter at the time it was sent out, I take it? A. Yes.

Q. In other words, it was signed by you after you read it? A. Yes.

Q. So that you have personal knowledge of this particular letter? A. Yes.

Mr. McDougall: We offer this letter in evidence as Plaintiff's Exhibit next in order.

Mr. Davies: We object to the admission of this letter upon the ground that the proper foundation has not been laid.

(The paper to which reference last is made was marked Plaintiff's Exhibit 3, and is hereto attached and made a part of this deposition.)

Mr. McDougall: A letter dated Sacramento 5, California, January 30, 1945.

"Young Iron Works, 2959 First Avenue South"——

it is abbreviated——

(Deposition of Albert S. Weaver, Jr.)

“Seattle, Washington. Attention: Mr. Paul Isaacson. Gentlemen: We wish to thank you for your letter of January twenty-fourth, appointing us representative of your line in this territory, and assure you that we will do everything possible to make our relationship very happy and profitable. We would appreciate it if you would send us four additional copies of your very well gotten up catalogue. In addition to these, we would appreciate your sending sufficient material for 125 more catalogs that we can include in our loose leaf binders that we will distribute to the logging, mining, and contracting industries in our area.

“We would also like a like number of your new circular on the manganese butt hooks and choker hooks, and butt rigging. We would also like to have four additional discount sheets.

“Very truly yours, Weaver Tractor Co.” [15]

Typed in, “A. S. Weaver, Jr.”

Q. (By Mr. McDougall): This letter that I have just read, Mr. Weaver, is your office copy, is it? A. Yes.

Q. And the original was mailed to Young Iron Works, is that right? A. Yes, sir.

Q. And did you obtain this from your files preliminary to coming to the deposition?

A. Yes.

Mr. McDougall: Did I offer this?

Mr. Davies: Yes, you did.

(Deposition of Albert S. Weaver, Jr.)

Q. (By Mr. McDougall): Now, the next letter you have shown me, Mr. Weaver, is a letter on letterhead of Young Iron Works, dated February 8, 1945, signed "Young Iron Works, by Paul Isaacson," addressed to Weaver Tractor Company. Do you remember receiving this letter from Young Iron Works in response to your letter of January 30, 1945? A. Yes.

Q. Upon receipt of this letter was the same placed in your file, that is the file of the Weaver Tractor Company? A. Yes.

Q. And was it from that file that you obtained same for production at the deposition today?

A. Yes.

Mr. McDougall: We offer this letter in evidence as Plaintiff's Exhibit next in order.

Mr. Davis: We object to the admission of the letter upon the grounds the proper foundation has not been laid.

(The paper to which reference last is made was marked Plaintiff's Exhibit 4, and is hereto attached and made a part of this deposition.)

Mr. McDougall: A letter on the letterhead of Young Iron Works, Seattle, dated February 8, 1945, addressed to Weaver Tractor Company, Sacramento 5, California.

"Attention: A. S. Weaver, Jr. Gentlemen: Wish to thank you very kindly for your letter of January thirtieth in reply to our letter of January twenty-fourth, appointing you as our representative in your territory. From your

(Deposition of Albert S. Weaver, Jr.)

reputation we feel satisfied that you people will do a very good job for us, and that our relationship will be very happy and of [16] mutual benefit.

“We sincerely appreciate the nice order received from you for initial stock and we will do everything to get this out as soon as possible. We may not be able to ship it all at once, and trust it will be satisfactory with you to make partial shipments. Just for your information, we wish to advise you that we are, and have been for the past three or four years, extremely busy with Government contracts; especially with U. S. Maritime, but it is our desire and hope to take care of your requirements satisfactorily, and we hope within the next three or four months that our position will be greatly changed.

“We wish to advise you that we do not have any loose leaf catalogues, but we are sending down to you nine bundles of catalogues, fifteen in each bundle, and you can have the covers taken off, and the sheets punched to fit your loose leaf binder.

“Enclosed herewith are four additional discount sheets, also with the catalogues we will send you approximately 250 folders on our new silver lined manganese choker and butt hooks. You can have your name stamped on them as distributors. We are making up the necessary rigging for manganese butt rigging, and will have this information to you very shortly.

(Deposition of Albert S. Weaver, Jr.)

"We assure you of our 100 per cent cooperation, and please do not hesitate to call upon us at any time.

"Would it be of any help, and would you think it necessary, to have our field engineer come down and go over the territory with your men? If so, please advise us and we would be pleased to send Mr. Herb Nelson down.

"Thanking you very kindly, we wish to remain, very truly yours, Young Iron Works."

Signed in ink, "Paul Isaacson," and then signed in type, "Paul Isaacson, President."

Q. (By Mr. McDougall): And attached to this letter—by the way—strike that. Mr. Weaver, I note attached to this letter [17] are three sheets, apparently mimeographed. A heading, "Young Iron Works Discount Sheet, Catalog No. 44. Number 4421-A. Effective February 1, 1944." The same heading appearing on all three sheets. Are these sheets that I have just referred to the sheets that were attached to the original letter in the same way received by Weaver Tractor Company?

A. Yes.

Q. And do those three sheets represent the discount sheets referred to in the letter?

A. Yes.

Mr. McDougall: In case my original offer of the letter did not include the discount sheets attached to the letter, I now offer the sheets attached.

Mr. Davies: We object to the admission of the sheets just referred to upon the ground that it is

(Deposition of Albert S. Weaver, Jr.)

irrelevant, incompetent, and immaterial, and that no proper foundation has been laid.

Mr. McDougall: This is off the record. * * * *

(The three identical papers to which reference last is made were marked Plaintiff's Exhibit 5, collectively, and are hereto attached and made a part of this deposition. The same are in words and figures following, to wit:

"Young Iron Works, Discount Sheet, Catalog No. 44, No. 4421-A. Effective February 1, 1944.

"Block Section, Pages 5 to 49.....30 -20%

"Tool Section:—

Page 52—No. 19812½-20½%

" 52—No. 11712½-25%

" 53—No. 25612½-20%

" 53—No. 25012½-25%

Pages 54 to 5712½-25%

Pages 58 to 6112½-20%

Page 6212½-25%

" 6312½-20%

Pages 64 to 6612½-25%

Page 67—Ferrules, No. 18812½-20%

" 67—Babbitting Tools12½-25%

" 68—Nos. 123, 331 and 33212½-20%

" 68—No. 12112½-25%

" 69—Entire Page12½-20%

" 70—Entire Page12½-25%

" 71—Nos. 50, 51 and 5412½-25%

" 71—No. 5512½-20%

" 72—Nos. 259, 266, 26112½-25%

" 72—No. 25412½-20%

Pages 73 and 74—Entire Page12½-25%

Page 75—Nos. 107 and 11112½-25%

" 75—No. 6712½-20%

Pages 79 to 8412½-25%

Pages 86 to 89—See Separate Price Lists")

(Deposition of Albert S. Weaver, Jr.)

Q. (By Mr. McDougall): Now, Mr. Weaver, do the letters that I have read and offered in evidence constitute the only correspondence you have with Young Iron Works with relation to your representing them in this area? A. Yes.

Q. And with respect to the discount sheets attached to the letter of Young Iron Works dated February 8, 1945, are those the discount sheets on the basis of which you thereafter represented Young Iron Works in this area?

A. There have been many changes since that time.

Q. In what respect?

A. Price adjustments and new items in the line, and so forth.

Q. By that you mean, do you not, Mr. Weaver, that the discount percentages have been changed from time to time with respect to [19] various articles; is that right?

A. The percentages and prices and all the figures that are on that sheet have probably been changed considerably.

Q. Then these discount sheets are more or less merely illustrative of the basis upon which you did business at the time you started to represent them?

A. Correct, yes.

Q. And is it true that your same arrangement with reference to representing Young Iron Works in the area you have designated is the same, with the exception that the discounts and the prices have been changed? A. Essentially so.

(Deposition of Albert S. Weaver, Jr.)

Q. That is the only change?

A. (Nods yes.)

Q. So that your arrangement with reference to the manner of your representation has been the same at all times from 1945 up to the present time?

A. Yes.

Q. Now, do you personally know of any verbal discussions or conversations had with any official or representative of the Young Iron Works with reference to the arrangement under which Weaver Tractor Company represented Young Iron Works in the area of the Sacramento Valley?

A. There have been several.

Q. Supplementing these letters?

A. There have been several tying in and more or less clarifying the situation as to small details.

Q. Are you personally familiar with the verbal arrangements? A. Yes.

Q. Will you tell us when they were consummated and with whom?

A. I can't give you the dates at all, but from time to time their representative would come down through there, and we would discuss the situation.

Q. Just a minute. By "come down through there" you mean come to [20] Sacramento?

A. Come to Sacramento, yes.

Q. To Weaver Tractor Company's place of business?

A. Yes. And we worked out there supplementing the letters the arrangement which I told you before.

(Deposition of Albert S. Weaver, Jr.)

Q. That is with reference to Weaver Tractor Company being the exclusive distributor in this area; is that what you mean? A. Yes.

Q. For the Young Iron Works products?

A. (Nods yes.)

Q. Now, do you happen to have any of the Young Iron Works catalogs? A. Yes.

Q. You have shown me a catalog, Mr. Weaver, bound with a folder, on the outside of which appears the words, "Young—Seattle," and at the bottom, "Young Iron Works, Seattle." By whom were you supplied with this catalog?

A. I believe they came direct from the factory by express.

Q. By "factory" you mean Young Iron Works at Seattle? A. Yes.

Q. Washington—is that correct?

A. Correct.

Q. Is this the current catalog? A. Yes.

Q. And I notice in the correspondence mention is made of catalogs, that is in this correspondence dated 1945. Do you recall whether they sent Weaver Tractor Company catalogs at that time?

A. Yes, they did.

Q. And following that correspondence did Young Iron Works send to Weaver Tractor Company additional catalogs also from time to time?

A. Yes.

Q. The catalogs contain a list of the various types of appliances manufactured by Young Iron Works and the prices, do they not?

A. I don't know about the prices, but——

(Deposition of Albert S. Weaver, Jr.)

Q. Well, I notice that some of the pages I have checked, the [21] prices are shown.

A. Yes, they do.

Q. Now, the prices shown there are the prices to the ultimate consumer, is that correct?

A. I don't know.

Q. Do you recall that from time to time during the last two years Young Iron Works would send down catalogs from time to time? A. Yes.

Q. That was to keep abreast of the current pricing of their products, is that right? A. Yes.

Q. And also to include items that might be of new design or manufacture that were not included in previous catalogs, is that right? A. Yes.

Q. With reference to the catalog, would they send you down a number?

A. I am not familiar with the details of the catalogs.

Q. Do you know how the trade throughout your area is supplied with catalogs?

Mr. Davies: I object to the question upon the ground——

Mr. McDougall: I will strike that and re-frame it.

Mr. Davies: We object to the question—Excuse me.

(The question was read by the reporter.)

Q. (By Mr. McDougall): Do you know, Mr. Weaver, whether or not loggers and consumers of products such as manufactured by Young Iron Works, whether they are supplied with catalogs put out by Young Iron Works?

(Deposition of Albert S. Weaver, Jr.)

Mr. Davies: We object to the question upon the ground it is incompetent, irrelevant and immaterial, and outside the scope of the order authorizing the taking of the examination. This goes to the relationship between Young Iron Works and Weaver Tractor Company.

Mr. McDougall: Will you read the question?

(The question was read by the reporter.)

Witness: We have issued a good many of them.

Q. (By Mr. McDougall): You say "we." You mean Weaver Tractor Company? A. Yes, sir.

Q. And when you say you have issued a good many of them you mean that you have distributed a good many of the Young Iron Works catalogs to loggers and other consumers of Young Iron Works products, is that right? A. Yes.

Mr. Davies: We still object to the question upon the ground it is incompetent, irrelevant and immaterial, and not within the scope of the order authorizing the taking of this deposition.

Q. (By Mr. McDougall): Mr. Weaver, where are these catalogs obtained by Weaver Tractor Company? A. From Young Iron Works.

Q. And can you state how they were obtained? In other words, briefly, what was the arrangement under which you obtained the catalogs?

A. We requested them, and they sent—honored the request.

Q. What is that?

A. We requested them, and they honored the request.

(Deposition of Albert S. Weaver, Jr.)

Q. And sent you down a number for distribution to the trade, is that correct? A. Yes.

Q. And is that more or less of a common occurrence since the time you started representing Young Iron Works up to the present, namely, the obtaining of catalogs from them and giving them to the trade generally? A. Yes.

Q. Do they charge you for the catalogs?

A. I don't know. I think not.

Q. Do you know, personally, Mr. Weaver, whether there have been any occasions when the Young Iron Works sent catalogs to Weaver Tractor Company without any request on the part of Weaver [23] Tractor Company?

A. I don't know.

Q. Now, you mentioned something, Mr. Weaver, about a representative coming down and supplementing the arrangement outlined in those letters that have been introduced in evidence. Do you happen to know who that was?

A. Usually Herb Nelson.

Q. Well, you state usually. Were there instances where some other gentleman from Young Iron Works would come to see Weaver Tractor Company? A. Yes.

Q. Who?

A. One of the Isaacsons. I have forgotten which one it is.

Q. Do you know that of your own knowledge? Do you know what connection the Isaacsons have with the Young Iron Works?

(Deposition of Albert S. Weaver, Jr.)

Mr. Davies: Object to the question upon the ground it is too general, as referring to the Isaacsons only.

Q. (By Mr. McDougall): Do you happen to know whether the gentleman you referred to is named Paul J. Isaacson? A. No.

Q. You don't know whether that is his first name or not? A. No.

Q. Did you meet him personally when he came? A. Yes.

Q. And do you know when the first time was following the making of the arrangement outlined in the letters it was that Mr. Isaacson came to see you in Sacramento?

A. He was only through here once, and I believe it was approximately a year after this exchange of correspondence.

Q. Did he come to Weaver Tractor Company?

A. He stopped, yes.

Q. And did you see him personally?

A. Yes.

Q. Talked to him? A. Yes. [24]

Q. And did your discussion have to do with your arrangement——

Mr. Davies: We object to the question——

Q. (By Mr. McDougall, continuing): ——under which you were representing——

Mr. Davies: We object to the question upon the ground it is irrelevant, incompetent and immaterial. It has not been shown what relationship existed between the Mr. Isaacson referred to and Young Iron Works.

(Deposition of Albert S. Weaver, Jr.)

Q. (By Mr. McDougall): Tell me the discussion you had with him when he came there?

A. Oh, it was just one of these casual sort of things. The gist of it was we liked the Young line, and they liked the sales that we were making of their products, and it was working out quite well with both sides, and everybody was very happy.

Q. Did this Mr. Isaacson that called on you discuss Young Iron Works products?

A. Oh, yes.

Q. Did he inform you that he was representing the Young Iron Works?

Mr. Davies: We make the same objection upon the ground that it has not been shown what Mr. Isaacson's connection was with the Young Iron Works, and what his authority was to make agreements of any sort.

Mr. McDougall: You may answer the question. Will you read it, Mrs. Pipher?

(The question was read by the reporter.)

Witness: I don't recall.

Q. (By Mr. McDougall): Do you remember how it was that you knew he was from the Young Iron Works?

A. The Isaacsons—it is a rather large family—owned the Isaacson Iron Works, and also the Young Iron Works. It is a very close tie-in up there, as we have been led to believe, and [25] it is a very loose arrangement. Any of the Isaacsons seemed to act impartially and completely for both concerns at

(Deposition of Albert S. Weaver, Jr.)

that time. Therefore, we handled the Isaacson Iron Works products, we handled Young products, so we just went over the whole thing in general.

Q. In other words——

Mr. Davies: Excuse me, Mr. McDougall.

Mr. McDougall: Sure.

Mr. Davies: We move the answer go out as being non-responsive and only hearsay, as to matters not within the knowledge of Mr. Weaver.

Q. (By Mr. McDougall): Is it true that during your discussion with him that the Young Iron Works was mentioned? A. Yes.

Q. Now, do you recall any other individual purporting to be from Young Iron Works calling on Weaver Tractor Company, other than this Herb Nelson you spoke of? A. No.

Q. Now, can you give me some idea, Mr. Weaver, of the volume of business done by you in connection with the sale in your area of Young Iron Works products?

A. No. We don't keep our records so that we have our sales of this particular line by years. I can give you purchases made by us from Young by years.

Q. Will you do that?

A. (Reading from paper): 1945, it would be about \$10,715.00. 1946, \$10,647.00. To date in 1947, \$6,052.00.

Q. Now, would you give us the details on how you receive and distribute the Young Iron Works products?

(Deposition of Albert S. Weaver, Jr.)

Mr. Davies: We object to the question in so far as it has to do with the distribution of the products upon the ground that it is not an examination within the scope of the order.

Mr. McDougall: Will you read the question?

(The question was read by the reporter.)

Witness: We issue purchase orders from time to time to Young Iron Works. They ship us the merchandise and bill us on open account.

Q. (By Mr. McDougall): And is there any discount allowed in connection with your purchase from Young?

A. I think they go to us on a net billing.

Q. How often do they bill you?

A. Once a month.

Q. So is it true that purchases so made run during the month, and as a regular thing at the end of the month or beginning of the month they send a billing to you for the amount of the purchases; is that right?

A. Yes.

Q. Now, with reference to this arrangement under which you handle those products, will you state what routine is followed when an ultimate consumer, a customer to whom you have sold Young Iron Works products returns the same to you, claiming that it is faulty or defective?

Mr. Davies: We object to the question upon the grounds heretofore stated, that the question calls for an answer relating to the relationship between the Weaver Tractor Company and the consumers. It is

(Deposition of Albert S. Weaver, Jr.)

irrelevant, incompetent and immaterial in so far as the subject of the present deposition is concerned as specified in the order permitting the taking of it.

Mr. McDougall: Will you read the question and let Mr. Weaver give us the answer?

(The question was read by the reporter.)

Witness: The article is returned to Young, who analyze it, and make such adjustment as they deem in order, and that information received by us we pass back to the customer.

Q. (By Mr. McDougall): Is it true that before the customer is given credit that Young Iron Works has the last say in determining whether the complaint——

A. Yes. [27]

Q. (Continuing): ——is justified?

A. Yes.

Q. Now, you mentioned a man by the name of Dick—or is it Herb Nelson?

A. Herb Nelson.

Q. And you know him personally, do you?

A. Yes.

Q. And do you know what his status is?

A. Not officially.

Q. Do you know by whom he is employed?

A. Young Iron Works.

Q. Do you know what name he goes by, that is with reference to his representative capacity for Young?

A. No.

Q. I notice in one of these letters that he is referred to as a field engineer.

A. That could be. He is in the sales department. What his capacity is I don't know.

(Deposition of Albert S. Weaver, Jr.)

Q. Have you ever heard him referred to as a field engineer for the Young Iron Works?

A. Just in that letter.

Q. Well, that is the letter of February 8, where they referred to Mr. Herb Nelson as the field engineer. Now, has he called on your firm?

A. Yes.

Q. At Sacramento? A. Yes.

Q. And do you know how often?

A. Probably about once every six months.

Q. And do you see him personally when he comes? A. Yes, usually.

Q. Do you know what he does when he comes here to see you or your firm?

A. Checks over the stock, discusses some of the features of his line of merchandise, once in a great while rides with our salesmen.

Q. When he rides with your salesmen where does he go? A. Larger logging accounts. [28]

Q. And do you know what he does when he goes to visit those accounts with your salesmen?

Mr. Davies: If you know?

Witness: I never have been with him.

Q. (By Mr. McDougall): Did you ever discuss with him what he did when he visited these accounts? A. Yes.

Q. Will you state what he informed you he did?

Mr. Davies: We object to the question upon the ground it is not shown that any statements made by Mr. Nelson are binding at all upon Young Iron Works.

(Deposition of Albert S. Weaver, Jr.)

Mr. McDougall: You can answer the question, Mr. Weaver.

A. They discussed with the various officials of the logging concern, and advantages in using Young rigging.

Q. And can you give us some idea, Mr. Weaver, of the length of Mr. Nelson's visits to the Sacramento area?

A. Usually they are for a matter of hours.

Q. And are there times when his visits are longer? A. A day or two.

Q. And would it be during the longer visits that he would make these trips with your salesmen?

A. Yes.

Q. Have you ever been out with Mr. Nelson, away from your place of business, Weaver Tractor Company? A. No.

Q. Do you know whether he has ever provided any of your salesmen or any of the accounts with which you deal in your area with entertainment of any kind? A. No.

Q. You don't know that? A. (Nods no.)

Q. Have you any arrangement with Young Iron Works with reference to advertising your products?

A. No.

Q. I am referring to other than the catalog business. A. No. [29]

Q. Do you know whether Young Iron Works products are advertised in your area?

A. I imagine through certain trade journals, although I don't know.

(Deposition of Albert S. Weaver, Jr.)

Q. Do you recall ever having observed any of their advertisements in trade journals in your area?

A. Not definitely.

Q. Do you personally know anything at all about their medium of advertising in your area?

A. Most of it—you mean from them?

Q. Yes. A. No.

Mr. McDougall: I think that is all, Mr. Weaver.

Cross-Examination

By Edmund Davies, Esq., of counsel specially appearing for defendant Young Iron Works:

Q. You just stated in your examination that you maintained a stock of the Young Iron Works products. Who does that stock belong to?

A. Weaver Tractor Company.

Q. How did you get it?

A. They filled our purchase requisitions.

Q. Then you made out a requisition or order?

A. Yes.

Q. For this stock? A. Yes.

Q. And what did you do with the order?

A. Mailed it to them.

Q. And then what did they do?

A. Acknowledged it and sent us the merchandise.

Q. And where was the order sent to?

A. Seattle.

Q. And is that where the merchandise came from? A. Yes. [30]

Q. And was it billed to you? A. Yes.

Q. That is to your company? A. Yes.

(Deposition of Albert S. Weaver, Jr.)

Q. And was it sent on consignment?

A. No.

Q. Was your company billed later for it?

A. Yes.

Q. And that is true of all the merchandise that you have purchased from Young Iron Works?

A. Yes.

Q. Now, in the course of your examination you have frequently used the word "representing" and there has been some mention of representation. What in the trade is meant by representing a manufacturer?

A. Selling his products.

Q. Do you receive any pay from Young Iron Works for any of your activities?

A. No.

Q. You just receive merchandise that you order and pay for, is that correct?

A. Yes.

Q. And when you spoke a while ago about materials that were returned to you, and that you sent them on to Seattle to the Young Iron Works, that they had the last say as to whether a credit would be made, if the Young Iron Works did not give a credit for any material that they thought was faulty, who would suffer the loss?

A. Usually the customer, if there is a loss involved.

Q. And with reference to the visits of Mr. Nelson, he does not take orders from you, does he?

A. No.

Q. Your orders are all by requisition?

A. By requisition.

(Deposition of Albert S. Weaver, Jr.)

Q. And he does not have anything to do with repairing items that are sent down here by his company, does he? A. No.

Q. And when you mention an exclusive arrangement, to you people in the trade that means that you simply are the only dealers in a particular area who sell products of that manufacturer; is [31] that correct? A. Yes.

Mr. Davies: That is all.

Mr. McDougall: That is all, Mr. Weaver.

Mr. Davies: One more question, if I might.

Q. Mr. Weaver, the Young Iron Works don't direct you in connection with any of your activities, do they? A. No.

Q. And you take no orders from them with reference as to how you are conducting your business?

A. No, sir.

Mr. Davies: That is all.

/s/ ALBERT S. WEAVER, JR.

And I Further Certify that the said transcription was by the said witness, Albert S. Weaver, Jr., thereafter read over, corrected and signed and by the said witness declared to be his deposition in the above entitled action.

In Witness Whereof, I have hereunto set my hand and affixed my official seal at my office in the County of Sacramento, State of California, this 8th day of September, 1947.

[Seal] /s/ ELMA A. PIPHER,
Notary Public in and for the County of Sacramento,
State of California.

My Commission Expires January 30, 1950. [32]

Mr. Davies: We make the same statement for the record that we made in connection with the testimony of Mr. Weaver, that is that we are appearing specially in connection with a motion to quash service which has heretofore been filed in this matter, and our appearance is also special in connection with a notice of the taking of this deposition under an order of the Court specifying that it is only in connection with the motion to quash that is now on file.

Testimony of

THOMAS H. LYNN

witness produced on behalf of plaintiff; sworn.

Direct Examination

By Archibald D. McDougall, Esq., of counsel on behalf of plaintiff:

Q. Mr. Lynn, where do you reside?

A. Route 6, Box 3330, Sacramento.

Q. What is your business?

A. I am located with the Weaver Tractor Company.

Q. What is your capacity?

A. Assistant sales manager.

Q. How long have you been connected with Weaver Tractor Company?

A. About four and a half years.

Q. Do you know whether or not Weaver Tractor Company handle Young Iron Works products?

A. Yes, they do.

(Deposition of Thomas H. Lynn.)

Q. And do you know how long they have been handling those products?

A. Oh, I would say about two years.

Q. You were here when Mr. Weaver testified, were you not? A. Yes.

Q. Now, do you have any knowledge of the arrangement under which Weaver Tractor Company handles the Young Iron Works products?

A. Some.

Q. Would you inform us of the information that you yourself know on that subject?

Mr. Davies: We object to the question as it calls for an answer that is purely hearsay. [33]

Witness: We are the retail outlet for their logging supplies in this area.

Q. (By Mr. McDougall): Is there any other firm in this area that handles their products?

A. Not in the——

Mr. Davies: We object to that upon the ground it is incompetent, irrelevant and immaterial, completely outside the scope of the order permitting the taking of this deposition.

Mr. McDougall: You can read the question, Mrs. Pipher, and he can answer it.

(The question was read by the reporter.)

Witness: There is none in the immediate vicinity.

Q. (By Mr. McDougall): And when I refer to area, I mean the area supplied by Weaver Tractor Company.

A. Yes.

(Deposition of Thomas H. Lynn.)

Q. Do you know how it is that Weaver Tractor Company happens to be the only firm in the Sacramento Valley area that handle Young Iron Works products?

Mr. Davies: If you know.

Witness: Well, yes, it is quite customary in the particular line of work that our organization and others of their type follow to not handle anything unless an exclusive is given. It is not good business.

Q. (By Mr. McDougall): When you say, "exclusive is given," what do you mean by that?

A. That we will be the only outlet in a particular described area.

Q. For the manufacturer?

A. For their products, yes.

Q. When you are referring to their products you mean Young Iron Works products?

A. Or any products which we represent.

Q. Do you personally know of any discussion had between any [34] representative of Young Iron Works and Weaver Tractor Company concerning this exclusive arrangement made which is referred to?

A. No, I don't.

Mr. Davies: We object to that question upon the grounds it calls for an answer that is hearsay.

Mr. McDougall: He has answered it. He said he doesn't know.

Mr. Davies: Very well.

Q. (By Mr. McDougall): In other words, you are not personally familiar with it?

A. That is right.

(Deposition of Thomas H. Lynn.)

Q. Have you personally ever had any discussion with any representative of the Young Iron Works concerning the exclusive arrangement under which Weaver Tractor Company handles their products?

A. No.

Q. Do you know any of the officials or any of the representatives of the Young Iron Works?

A. I have met Mr. Nelson, and one of the Isaacsons when they were in Sacramento.

Q. Do you know what Isaacson it was?

A. No, I don't.

Q. Where did you meet Mr. Isaacson?

A. At the Weaver Tractor Company.

Q. And about when was it?

A. Oh, about a year and a half ago.

Q. Were you present during that conversation in which he participated?

A. No, I wasn't.

Q. You weren't there personally?

A. No.

Q. Did you talk to Mr. Isaacson?

A. Yes, when I was introduced to him.

Q. When he was introduced can you state whether the introduction identified him with Young Iron Works in any way?

Mr. Davies: We object to that question as not being proper upon the ground it calls for an answer that is hearsay, and there [35] is no evidence that the Mr. Isaacson to whom he refers has any connection with Young Iron Works, or anything that he said would be binding.

Mr. McDougall: Will you answer the question?

A. Yes. I knew that he was from there.

(Deposition of Thomas H. Lynn.)

Q. How did you know that?

A. When he was introduced I was told that he was visiting from Seattle, and down in connection with the Young Iron Works.

Q. Is that the only time you ever saw him at Weaver Tractor Company?

A. Yes, it is.

Q. Did you ever see anyone else from Young Iron Works at Weaver Tractor Company?

A. Herb Nelson.

Q. Do you know who Herb Nelson is?

A. He is a representative of their sales department.

Q. And have you seen him personally when he comes to Weaver Tractor Company? A. Yes.

Q. Have you talked personally with him?

A. On occasions, yes.

Q. Do you know about how often he comes?

A. Oh, I would say about every six months.

Q. And during the times that you personally have talked to him, can you give us in substance what the nature of your discussion was?

A. Well, primarily,—

Mr. Davies: We object to that as calling for a conversation with some one who purports to be from Young Iron Works, and it is not shown that anything that he said or might say would be binding upon the company.

Mr. McDougall: You may answer.

A. Usually the sales were discussed, the amount of business that we were doing with their line, and that is about the extent of it.

(Deposition of Thomas H. Lynn.)

Q. I take it from your answers that you didn't personally talk [36] to him every time he came?

A. No, that's true.

Q. Would there be occasions when you saw him there but didn't talk to him?

A. I don't recall any.

Q. How did you happen to know that Mr. Herb Nelson was from Young Iron Works?

A. Oh, he was introduced to me as being a sales representative from Young Iron Works.

Q. And during your personal discussions with him was the name Young Iron Works products mentioned?

A. In the discussion regarding sales of their products and others, yes.

Q. Do you know whether any other individual, outside of Mr. Isaacson and Mr. Nelson, has called at Weaver Tractor Company?

A. I don't know of any.

Q. Do you happen to know what the title of Mr. Nelson is?

A. No, I don't. I know that he is a representative of their sales department. Other than that, I couldn't say.

Q. Have you ever taken any trips with him?

A. No.

Q. Do you happen to know, Mr. Lynn, whether Young Iron Works ever ships any of their products to the ultimate consumer direct in the area covered by Weaver Tractor Company?

Mr. Davies: If you know they do.

The Witness: I know they don't.

(Deposition of Thomas H. Lynn.)

Q. (By Mr. McDougall): How do you know that?

A. Perhaps I should amend that. To my knowledge, they don't.

Q. Now, will you amplify that? You were going to.

A. Well, we are the distributor or retail outlet for their products here, and to the best of my knowledge whenever an order or an inquiry is sent to the Young Iron Works in Seattle from the area which we serve, it is referred to us. There is a [37] letter written to the ultimate consumer stating that we are the retail distributor of their products for that area, and that they should contact us regarding purchase of that item, and a carbon copy of the letter is then mailed to us for a follow-up so that we can call on the party.

Q. And as far as you know the ultimate distributor—or the ultimate consumer will then call on Weaver Tractor Company—

A. To the best of my knowledge, yes.

Q. (Continuing): —to make a purchase of whatever he wants? A. That is correct.

Mr. McDougall: That is all.

Cross-Examination

By Edmund Davies, Esq., of counsel specially appearing for Young Iron Works:

Q. Mr. Lynn, when you refer to having an exclusive sale of products, you mean by that, don't you, that you are merely the only one in this area—

A. That is right.

(Deposition of Thomas H. Lynn.)

Q. (Continuing): —that is handling the products of the particular manufacturer, is that correct—

A. Yes.

Q. (Continuing): —that you sell here?

A. That is correct.

Q. And when you referred to “their products” you meant by that, didn’t you, that they were products manufactured by Young Iron Works, but which belonged to you after you purchased them and sold them?

A. That is correct, yes, sir.

Q. And did Young Iron Works direct you in connection with any of your activities?

A. None whatsoever.

Q. And the stock that you maintain of the products manufactured by Young Iron Works belongs to whom? [38]

A. To the Weaver Tractor Company.

Q. Belongs to the Weaver Tractor Company?

A. That is right.

Q. And as far as you know they maintain no stock of goods in Sacramento from which they fill orders?

A. They do not.

Q. When you want products of Young Iron Works you send an order by mail to Seattle?

A. That is correct.

Q. And they are returned to you?

A. Yes, sir.

Q. And you pay for them?

A. That is correct.

Q. And then they belong to you?

A. Yes.

Mr Davies: That is all.

(Deposition of Thomas H. Lynn.)

Redirect Examination

By Archibald D. McDougall, Esq., of counsel on behalf of plaintiff:

Q. With reference to the payment, Mr. Lynn, can you tell us what the arrangement is, how the amount to be paid by you is fixed?

A. Do you mean from Young Iron Works, when they ship their products?

Q. From Young Iron Works to Weaver Tractor Company.

A. Yes. At the time of shipment we are billed for the item shipped. There is an invoice sent the same day. It goes through our records to be posted and entered when it is received, and the first of the month they send a statement covering their shipments for that month, against which these invoices are checked, and they are paid at that time.

Q. Now, there has been a letter introduced in evidence, annexed to which are some discount sheets. Can you give us what the situation is concerning the allowance of discount in fixing the amount you pay?

Mr. Davies: We object to that as being incompetent, irrelevant and immaterial. [39]

Witness: I am not too familiar with the discount schedules. I believe they are billed to us at a net figure. I think that the discount basis is taken into consideration by the Young Iron Works at the time that we are billed.

(Deposition of Thomas H. Lynn.)

Q. (By Mr. McDougall): By that you mean that the Young Iron Works makes the allowance of the discount when they bill you?

A. I believe that is correct.

Q. And they bill you for the net after the discount has been deducted? A. That is correct.

Q. And do the discounts vary, different percentages, in other words, for different appliances?

A. I really couldn't say.

Mr. McDougall: That is all. And in case I overlooked it, I desire to offer in evidence this catalog of Young Iron Works that was identified during the testimony of Mr. Weaver.

Mr. Davies: We object to the admission of the catalog upon the ground the proper foundation has not been laid.

/s/ THOMAS H. LYNN.

And I further certify that the said transcription was by the said witness, Thomas H. Lynn, thereafter read over, corrected and signed, and by the said witness declared to be his deposition in the above entitled action.

In witness whereof, I have hereunto set my hand and affixed my official seal at my office in the County of Sacramento, State of California, this 6th day of September, 1947.

[Seal] /s/ ELMA A. PIPHER,
Notary Public in and for the County of Sacramento, State of California.

My Commission expires January 30, 1950. [40]

PLAINTIFF'S EXHIBIT No. 1

January 18, 1945.

Young Iron Works
Seattle, Washington

Gentlemen:

During my recent trip to the Logging Congress, I called upon the Interstate Tractor Co. in Portland, Oregon, and was very much impressed by your line of logging blocks, butt hooks, clevises and so forth.

We carry a rather extensive line of logging supplies in Sacramento, and service the pine area in this region, and in the past have enjoyed a very nice business in this area. However, I believe we could improve our position materially with your line.

Will you please let us know if you are in the position to service us. If such is the case, without any further correspondence from us, will you send us one-hundred and fifty (150) of your catalogues so that we can incorporate them in a loose leaf catalogue that we will put out for distribution to the logging industry throughout this area.

Yours very truly,

WEAVER TRACTOR
COMPANY.

FRANK B. GRADY.

FBG/mja

PAUL J. ISAACSON
PRESIDENT

A. E. HANSEN
VICE-PRESIDENT

F. THED. ISAACSON
SECRETARY

YOUNG IRON WORKS

ESTABLISHED 1903

2959 1st. AVE. SO.
SENECA 1071

TIMKEN ROLLER BEARING BLOCKS
LOGGING EQUIPMENT

CABLE ADDRESS
"YOUNG"

SEATTLE

January 24, 1945

Mr. Frank B. Grady
Weaver Tractor Co.
1900 T. Street
Sacramento, California

Dear Mr. Grady:

We wish to thank you very kindly for your letter of January 18th, and contents noted. We are only sorry that the writer did not have the opportunity to make your acquaintance at Seaside, Oregon. However, we are glad that you stopped at the Interstate in Portland and saw the job that they are doing for us in Oregon.

We wish to advise you that we are very much interested in having you as our representative in your territory for our line of blocks, tools and manganese hooks. Under separate cover we are sending you one of our new catalogues. We also wish to advise that in the next few days we will have our new circular out on our line of new manganese butt hooks and choker hooks, as well as butt rigging.

3 additional
and catalogues
for Grady

You ask in your letter if we are in a position to take care of you, and we wish to advise you that we are. You will note that the catalogue we are sending you is bound, and as you mentioned that you wanted catalogues for a loose leaf binder, please let us know if you want us to send you 150 more of these.
125 without cover or binder

yes →

3 additional
discount sheets
for Grady

Also enclosed herewith is one of our discount sheets for distributors. Its prices are f.o.b. Seattle.

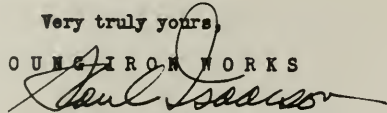
For your information we wish to advise you that we have had a tentative arrangement with the Capitol Tractor and Equipment Company, but we are canceling them out as of today.

The writer will be anxious to call on you the first time he gets down in your territory.

Thanking you very kindly, we wish to remain

Very truly yours,

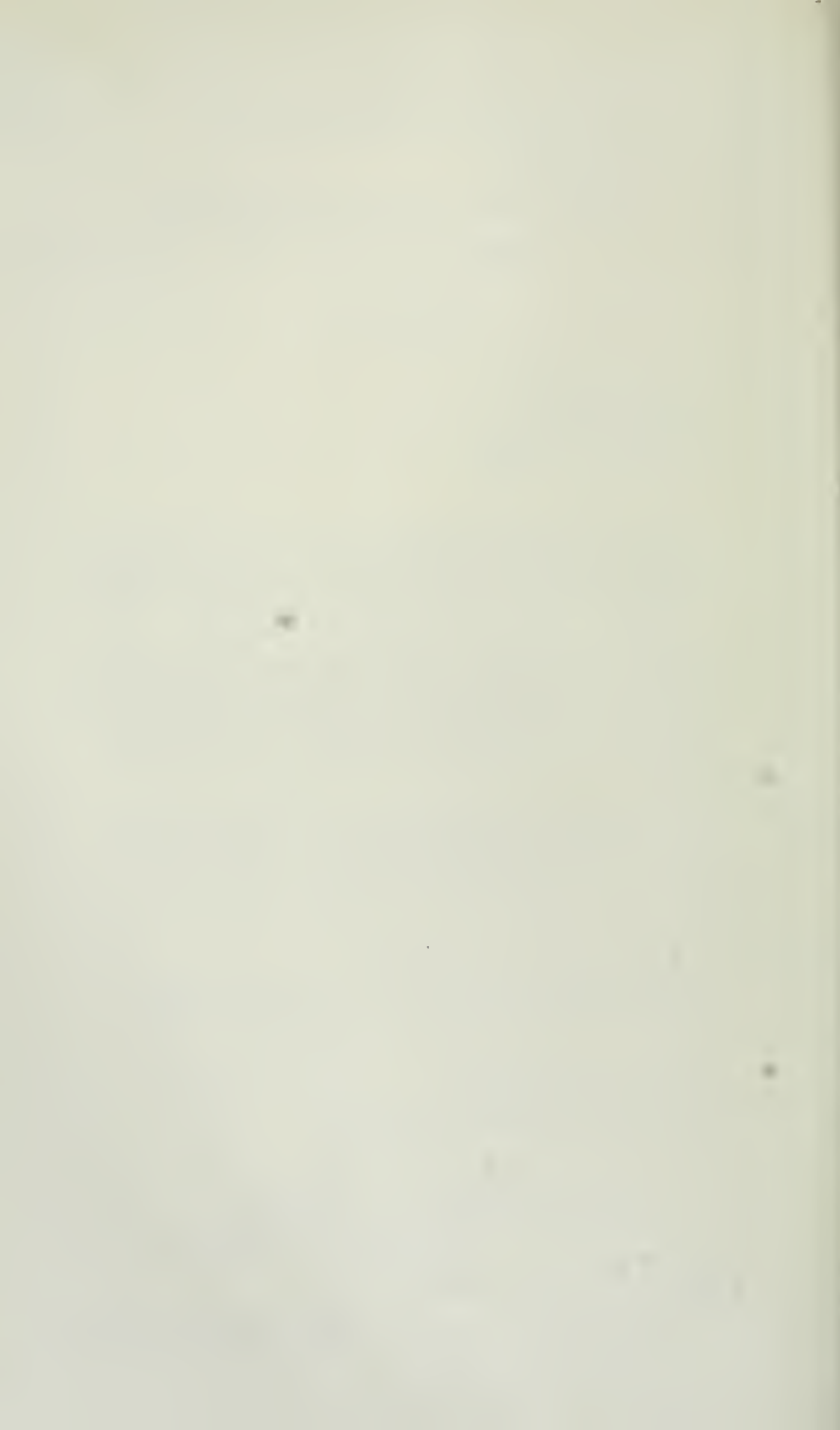
YOUNG IRON WORKS



PAUL ISAACSON
President

PI/mc
encl: 1

Plaintiff's Exhibit 2



PLAINTIFF'S EXHIBIT No. 3

Sacramento 5, California

January 30, 1945

Young Iron Works
2959 First Avenue So.
Seattle, Washington

Attention: Mr. Paul Isaacson

Gentlemen:

We wish to thank you for your letter of January 24 appointing us representative of your line in this territory, and assure you that we will do everything possible to make our relationship very happy and profitable.

We would appreciate it if you would send us four additional copies of your very well gotten up catalogue. In addition to these, we would appreciate your sending sufficient material for 125 more catalogues that we can include in our loose leaf binders that we will distribute to the logging, mining, and contracting industries in our area.

We would also like a like number of your new circular on the manganese butt hooks and chooker hooks, and butt rigging. We would also like to have four additional discount sheets.

Very truly yours,

WEAVER TRACTOR CO.

A. S. WEAVER, Jr.

fbg:sh

PLAINTIFF'S EXHIBIT No. 4

[Letterhead Young Iron Works]

[Stamped]: Received Feb. 9, 1945.

February 8, 1945

Weaver Tractor Company
Sacramento 5, California

Attention: A. S. Weaver, Jr.

Gentlemen:

Wish to thank you very kindly for your letter of January 30th in reply to our letter of January 24th, appointing you as our representative in your territory. From your reputation we feel satisfied that you people will do a very good job for us, and that our relationship will be very happy and of mutual benefit.

We sincerely appreciate the nice order received from you for initial stock and we will do everything to get this out as soon as possible. We may not be able to ship it all at once, and trust it will be satisfactory with you to make partial shipments. Just for your information, we wish to advise you that we are, and have been for the past three or four years, extremely busy with government contracts; especially with U. S. Maritime, but it is our desire and hope to take care of your requirements satisfactorily, and we hope within the next three or four months that our position will be greatly changed.

We wish to advise you that we do not have any loose leaf catalogues, but we are sending down to

you 9 bundles of catalogues (15 in each bundle) and you can have the covers taken off, and the sheets punched to fit your loose leaf binder.

Enclosed herewith are four additional discount sheets, also with the catalogues we will send you approximately 250 folders on our new silver lined manganese choker and butt hooks. You can have your name stamped on them as distributors. We are making up the necessary rigging for manganese butt rigging, and will have this information to you very shortly.

We assure you of our one hundred per cent cooperation and please do not hesitate to call upon us at any time.

Would it be of any help, and would you think it necessary, to have our field engineer come down and go over the territory with your men? If so, please advise us and we would be pleased to send Mr. Herb Nelson down.

Thanking you very kindly, we wish to remain

Very truly yours,

YOUNG IRON WORKS,
/s/ PAUL ISAACSON,
President.

PI/mc

encl: 4

PLAINTIFF'S EXHIBIT No. 5

Young Iron Works, Discount Sheet, Catalog
No. 44, No. 4421-A. Effective February 1,
1944.

Block Section, Pages 5 to 49.....	30	-20%
Tool Section—		
Page 52—No. 198	12½	-20%
“ 52—No. 117	12½	-25%
“ 53—No. 256	12½	-20%
“ 53—No. 250	12½	-25%
Pages 54 to 57	12½	-25%
“ 58 to 61	12½	-20%
Page 62	12½	-25%
“ 63	12½	-20%
Pages 64 to 66	12½	-25%
Page 67—Ferrules, No. 188	12½	-20%
“ 67—Babbitting Tools	12½	-25%
“ 68—Nos. 123, 331 and 332	12½	-20%
“ 68—No. 121	12½	-25%
“ 69—Entire Page	12½	-20%
“ 70—Entire Page	12½	-25%
“ 71—Nos. 50, 51 and 54	12½	-25%
“ 71—No. 55	12½	-20%
“ 72—Nos. 259, 266, 261	12½	-25%
“ 72—No. 254	12½	-20%
Pages 73 and 74—Entire Page	12½	-25%
Page 75—Nos. 107 and 111	12½	-25%
“ 75—No. 67	12½	-20%
Pages 79 to 84	12½	-25%
Pages 86 to 89—See Separate Price Lists		

[Endorsed]: No. 11906. United States Circuit of Appeals for the Ninth Circuit. LeRoy Cowan, Appellant, vs. Young Iron Works, a corporation, Appellee. Transcript of Record. Upon Appeal from the District Court of the United States for the Northern District of California, Northern Division.

Filed: April 22, 1948.

/s/ PAUL P. O'BRIEN,
Clerk of the United States Circuit Court of Appeals for the Ninth Circuit.

United States Circuit Court of Appeals
for the Ninth Circuit

No. 11906

LeROY COWAN,

Appellant,

vs.

YOUNG IRON WORKS, a corporation,

Respondent.

STATEMENT OF POINTS ON WHICH APPELLANT INTENDS TO RELY AND DESIGNATION OF RECORD FOR CONSIDERATION THEREOF

To the Clerk of the above entitled court:

You are hereby notified that the above named appellant intends to rely on the following point in connection with the appeal herein, to wit:

The trial court erred in granting the motion of the above named respondent to quash service of summons on the ground that said respondent was not doing business in the State of California so as to subject it to the service of process in said state.

and said appellant hereby designates the whole record on appeal herein (including the depositions filed) as necessary for the consideration of said point on appeal above mentioned; and it is requested that the whole of said record be printed.

Dated this 28th day of April, 1948.

/s/ ARCHIBALD D. McDOUGALL,
Attorney for Appellant.

Receipt of a copy of the foregoing Statement of Points and Designation of Record is hereby admitted this 29th day of April, 1948.

JOHNSON, WARE AND
DAVIES,

By /s/ EDMUND DAVIES,
Attorneys for Respondent,
Specially appearing for
Respondent.

[Endorsed]: Filed April 30, 1948.